

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR MEETING

MONDAY, JULY 12, 1999

The regular meeting took place in Room 220, 441
4th Street, N.W., Washington, D.C. 20001, when were present:

ANGEL F. CLARENS	Chairperson
ALBERTO BASTIDA	Office of Zoning
KENNETH KARKEET	Office of Zoning
VINCENT ERONDU	Office of Zoning
DAVE COLBY	Office of Planning
ALAN BERGSTEIN	Corporation Counsel
STEPHEN COCHRAN	Office of Planning

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P R O C E E D I N G S

Time: 1:43 a.m.

CHAIRPERSON CLARENS: This is the July 12, 1999, meeting of the Zoning Commission for the District of Columbia.

Preliminary matters?

I. PRELIMINARY MATTERS:

MR. BASTIDA: No, I don't have any preliminary matters, Mr. Chairman. The Office of Zoning have no preliminary matters.

CHAIRPERSON CLARENS: The actions on the minutes: We have two minutes in front of us.

II. ACTION ON MINUTES:

MR. BASTIDA: Mr. Chairman, I would like to request that those minutes will not be looked at today. There is a couple of issues that I need to try information on them, and I would rather provide them to you for the September meeting.

CHAIRPERSON CLARENS: We'll postpone action on the minutes. Proposed actions? The Office of Planning.

III. PROPOSED ACTION:

A. 98-20M (PUD Walter Washington Estates)

MR. COLBY: The first case is 828 Bellvue Street, S.E., modification to an approved PUD, was submitted sometime ago, actually. A summary of the hearing which was held on March 12th, and I'm happy to go briefly through some

1 of the -- some portion of our report if the Commission would
2 like me to do that. It will take me a minute and a half to
3 summarize what we've provided.

4 CHAIRPERSON CLARENS: Yes, I think that will
5 take a minute and a half. My only question is what is this
6 note about not timely submitted to OZ by applicant?

7 MR. BASTIDA: There was a serious request by
8 the Zoning Commission that the applicant did not submit.
9 Accordingly, I didn't include it in the package, because I
10 made the determination that the Commission would not be ready
11 to finalize -- to give a final approval, because all the
12 information would not be in front of you.

13 CHAIRPERSON CLARENS: Wait a minute. So we are
14 not ready to move on this?

15 MR. BASTIDA: No, we are not. It was a last
16 minute, and I wasn't just going to take it out of the agenda.
17 I wanted you to be aware that we have pursued, for you to be
18 able to take a final -- to make a final determination on this
19 case, and it was -- or to propose the termination of this
20 case, but the information is not in front of you.

21 CHAIRPERSON CLARENS: What is the information
22 that is not in front of us?

23 MR. BASTIDA: Because the applicant did not
24 provide it in a timely fashion.

25 MS. KRESS: We have not, for example, received
26 the findings of fact and conclusions of law to help facilitate

1 decision making. I believe Mr. Bastida was informed that this
2 wasn't a rush for them, since they are working right now and
3 building right now, and so they haven't felt the urgency to
4 submit the additional information that was requested by the
5 Commission.

6 CHAIRPERSON CLARENS: Okay. So we are
7 postponing action on 98-20M?

8 MS. KRESS: Until September.

9 CHAIRPERSON CLARENS: Until September.

10 **B. 98-2M (SP DISTRICTS UPDATE)**

11 Ms. KRESS: 99-2M, I believe, is all ready to
12 go forward. Perhaps the Office of Planning would like to
13 speak to that.

14 CHAIRPERSON CLARENS: Mr. Colby.

15 MR. COLBY: The next case is a -- Well, it's a
16 modification of an approved PUD to allow construction of 472
17 room hotel at 1000 K Street.

18 The hearing was held on June 3. Our summary --
19 Again, I can give you a one minute summary of that.

20 The presently approved PUD allowed construction
21 of a 9.3 FAR, 130 foot office building approved in the late
22 1980s. The current hotel PUD will have a larger FAR, 10.5
23 FAR, same height. The applicant includes an agreement with
24 the community to provide off-site housing of 25 partial rate
25 units.

26 The application is not inconsistent with the

1 comp plan, which recommends high density commercial use for
2 this subject property. That's a change in the comp plan from
3 when the PUD was originally approved.

4 We note that the proposed hotel is in the
5 District's eyes a very desirable land use for this location, a
6 short walk from the new Convention Center, and there are
7 numerous mentions in the comp plan about recommending both
8 hotel development near the new Convention Center which is
9 under construction.

10 The ANC is supportive. The persons in
11 opposition, which included the hotel and restaurant parties,
12 Reverend Grayland Hagler and Ellen McCarthy representing a
13 committee of 100, and Ms. Beth Sullivan, oppose the
14 application for various reasons; but the one with the most
15 paper before you is the issue as to whether this application
16 should be allowed as a PUD modification.

17 With that, I'll be happy to answer any
18 questions you may have.

19 CHAIRPERSON CLARENS: Any questions of OP? Any
20 motions?

21 COMMISSIONER FRANKLIN: Mr. Chairman, I'll
22 begin the discussion by moving to approve this application as
23 reflected in the findings of fact and conclusions of law as
24 submitted by the applicant.

25 CHAIRPERSON CLARENS: Do I hear a second?

26 COMMISSIONER HOOD: Mr. Chairman, before we --

1 CHAIRPERSON CLARENS: I need a second for the
2 motion.

3 COMMISSIONER PARSONS: Oh, I thought he did.
4 I'm sorry.

5 CHAIRPERSON CLARENS: No.

6 COMMISSIONER HOOD: I thought we were open for
7 discussion.

8 CHAIRPERSON CLARENS: That's right. We make a
9 motion. We second it. We discuss it. Then we vote.

10 COMMISSIONER HOOD: For discussion purposes,
11 I'll second it.

12 CHAIRPERSON CLARENS: Okay. So it's been
13 properly moved and seconded, and discussion -- Mr. Franklin?

14 COMMISSIONER FRANKLIN: I have examined the
15 materials that have been supplied by the applicant and its
16 counsel, and am satisfied that this application is properly
17 before us as a modification, for a number of reasons, not the
18 least that by definition of the dictionary it's a
19 modification, contrary to what we were advised by the
20 opposition.

21 I believe that the improvements to the
22 landscaping and to the -- and the description of the treatment
23 of the lanterns and the signage are responsive to the concerns
24 that I had at the hearing, and I would hope my colleagues
25 would agree.

26 CHAIRPERSON CLARENS: Mr. Hood.

1 COMMISSIONER HOOD: Mr. Chairman, I'd like to
2 associate myself with the comments of Ms. Ellen McCarthy. I
3 think at a certain point in time that the applicant has done
4 the legwork with the ANC and community groups. I think it's a
5 good project, but I'm kind of concerned about the message
6 we're sending as opposed to a modification.

7 From looking at the statistics, everything is
8 changed with the exception, I believe, of the height. I think
9 that this Commission at some point in time -- we need to
10 decide, when we decide on these PUDs, what a modification is.

11 I've looked in the regulations. I went back
12 and forth trying to figure out what is a minor modification,
13 and I, too, would associate myself with the comments of Ms.
14 McCarthy. While I will be voting in favor of it, I would like
15 to see us eventually have some closure to what is a minor
16 modification of a PUD.

17 CHAIRPERSON CLARENS: Well, this is a major
18 modification. It's not a minor modification. I don't think
19 the applicant claimed that it was a minor modification. I
20 think they claimed that it was a major modification, but it is
21 a modification.

22 COMMISSIONER FRANKLIN: I agree with Mr. Hood.
23 We need some clarification, but in the posture of the case at
24 the moment, I'm willing to go forward on the basis of the
25 modification.

26 I'm not quite clear. Perhaps the staff can

1 explain to us what the distinction is between considering this
2 as a new application and a modification. Is it basically the
3 fee?

4 CHAIRPERSON CLARENS: Well, no. This case is
5 more complex than that.

6 MR. BASTIDA: Yes. If the applicant were to
7 begin a new application, then perhaps he's giving up the
8 existing approval, and so it's a clean, new set of rules. By
9 going with a modification, the application is retaining the
10 option to the previous approved PUD and to try to gain a new
11 one without losing the rights that they already have.

12 I don't know if I made myself clear.

13 COMMISSIONER FRANKLIN: Well, it seems to me a
14 meritorious project.

15 MR. BASTIDA: And the Commission, usually when
16 it's a minor modification, approves it without a hearing. If
17 it is a modification to this extent, the hearing takes place,
18 and it's almost equivalent to having a new case, that parties
19 -- there is the applicant, parties in opposition. It is the
20 same amount of testimony, the same process, that takes place
21 for an application.

22 COMMISSIONER FRANKLIN: That's why I asked the
23 question.

24 COMMISSIONER HOOD: But I also think that, with
25 one thing changing -- I mean, that's -- We need to decide at
26 some point in time -- I have to agree with Commission Franklin

1 that this is a good project and we need to move forward, but
2 with the applicant -- I mean, for the applicant to provide us
3 information about what we've done previously, what the
4 Commission has done previously, I think, is not still coming
5 to any standard of actually how we need to proceed with
6 whether or not we ask for another -- I mean a second stage or
7 ask for a new PUD, as opposed to what we have here, because,
8 clearly -- clearly, a lot of changes have been made.

9 MR. BASTIDA: It will be something -- a rule
10 that the Commission will have to then establish. As I recall,
11 this is not the first extended modification that has taken
12 place after a previously approved PUD.

13 COMMISSIONER HOOD: Well, I agree with that,
14 Mr. Bastida. I still believe that, even though it was done
15 previously, it doesn't make it correct. I believe at some
16 point in time we need to correct it here on the --

17 MS. KRESS: I believe that we have had the
18 legal interpretation of our own corporation counsel that this
19 is before us legally as a modification. The point that you're
20 making is perhaps this is something we as a Commission -- you
21 as a Commission in the future should discuss and make perhaps
22 some formal definitions. I think that is well worth
23 exploring, but it is legally -- We have been informed it is
24 legally in front of you today.

25 COMMISSIONER HOOD: Also, Mr. Chairman, are
26 we're going into findings of fact or are we just having

1 basically discussion?

2 CHAIRPERSON CLARENS: No, we'll have
3 discussions, and then after we take a vote on the case, then
4 we'll discuss findings of facts and conclusions of law.

5 Mr. Parsons?

6 COMMISSIONER PARSONS: Well, on the -- To
7 repeat what's already been said, most of these PUDs that we
8 have modified have resulted in better projects, as I recall,
9 and I think that's the case here. But this is clearly, to me,
10 beyond the word modification. It's a totally new use.

11 I'm going to vote for it, but I think we should
12 spend some time on it, because we're going to get one we don't
13 like and that they'll use this case as a citation why they
14 should be granted a modification. That's my point, is every
15 time these come in, they're usually a better project. Sooner
16 or later, one is going to come in that isn't.

17 CHAIRPERSON CLARENS: Very interesting. Okay.
18 Very well. So any further discussion?

19 All in favor of the motion to approve 99-2M,
20 PUD modification at 1000 K Street, signify by saying Aye.

21 MS. KRESS: Excuse me. This does not include
22 the findings of fact. Are you going to discuss them ?

23 CHAIRPERSON CLARENS: Well, we're going to
24 discuss the findings of facts. That's the correct procedure.
25 Okay.

26 Opposed? Hearing none, the application is

1 approved.

2 Okay, discussion on findings of fact and
3 conclusions of law? Madam Director, you have some?

4 MR. BASTIDA: Mr. Chairman, may I count the
5 vote?

6 MS. KRESS: Record the vote.

7 MR. BASTIDA: Record the vote.

8 CHAIRPERSON CLARENS: Okay, sure.

9 MR. BASTIDA: The vote is four to zero, with
10 Mr. Franklin moving the motion, Mr. Hood seconding, and all
11 the Commissioners voting yes to approve.

12 CHAIRPERSON CLARENS: Correct. If you can just
13 give me a second so that I can find the --

14 MS. KRESS: Let me point out something while
15 you're looking, Mr. Chair.

16 Page 20 is in here twice. The first page 20
17 appears to have been redone to the second page 20. So I would
18 just point that out as you are reviewing the findings of fact
19 and conclusions of law.

20 COMMISSIONER FRANKLIN: Is there a change
21 between the two?

22 MS. KRESS: Yes. Basically, there's an
23 additional sentence on the second page 20, and then what is
24 now Number 10 on the first page 20 becomes 11 on page 21.

25 COMMISSIONER FRANKLIN: Because I don't have
26 two pages. My package did not contain -- I don't believe.

1 MS. KRESS: All right. Then I -- That's the
2 anomaly.

3 COMMISSIONER FRANKLIN: So, Ms. Kress, the
4 correct version, in your view, has paragraph number 10 at the
5 bottom of 20 and paragraph 11 at the top of 21?

6 MS. KRESS: Exactly.

7 COMMISSIONER FRANKLIN: That's what my packet
8 has.

9 CHAIRPERSON CLARENS: Okay, I found it.

10 MS. KRESS: Mr. Chairman, you might want to go
11 through page by page or --

12 CHAIRPERSON CLARENS: I understand that, but I
13 just found the proposed findings of fact and conclusions of
14 law. Can you tell me again what was the issue of page 22?

15 MS. KRESS: If you only had one page 20 -- I
16 seem to have been the one who got --

17 CHAIRPERSON CLARENS: Page 20 or page 22?

18 MS. KRESS: Twenty. I had two in mine.

19 CHAIRPERSON CLARENS: I have only one.

20 MS. KRESS: So then you are correct. You have
21 the correct one.

22 CHAIRPERSON CLARENS: Well, you can guide me
23 through this a little bit, but it seems to me that we should
24 not have to go item by item through all the findings.

25 MS. KRESS: Well, perhaps -- I personally, in
26 reviewing it, did not --

1 CHAIRPERSON CLARENS: I'd rather find issues
2 that the Commission has found that they might disagree or
3 issues that have been left out --

4 MS. KRESS: You might want to use the decision
5 --

6 CHAIRPERSON CLARENS: -- or that the staff
7 might have done, rather than going page by page.

8 MS. KRESS: Then maybe you might want to start
9 with page 21, the actual decision.

10 COMMISSIONER HOOD: Mr. Chair, I have a
11 question on page 11, number 39, in the findings of fact. Feel
12 free to correct me what I say. It says Mr. Fuller stated
13 during the construction period, the project would generate
14 approximately \$55.8 million of new income to the business.

15 I believe -- I may be incorrect, but I believe
16 when you're dealing with findings of fact that you're dealing
17 with facts. I don't think that's a fact. I don't know if
18 that should be put in our findings of fact. That shouldn't be
19 included, I don't think.

20 MS. KRESS: You can do whatever you wish. We
21 have in the past included information such as that.

22 COMMISSIONER HOOD: That's an assumption.

23 MS. KRESS: It says through testimony and in
24 economic and fiscal impact study, blah-blah-blah. It states
25 how it's supported. That doesn't mean, if you're
26 uncomfortable with it, it can't be rewritten.

1 CHAIRPERSON CLARENS: Well, I think it would be
2 easy enough to ask staff to check the record and find out if,
3 in fact, Mr. Fuller testified to \$58.8 million. I don't have
4 any recollection one way or another, but if you do, that's
5 fine. But we can ask staff to check that.

6 COMMISSIONER HOOD: I guess my question is --
7 Maybe I'm misunderstanding what we're doing. I thought we
8 were dealing with facts, and that's an assumption. That's why
9 I highlighted that as to be taken out. I may be incorrect.

10 CHAIRPERSON CLARENS: Well, no, but the finding
11 of fact is not to the 55.8. The finding of fact is to Mr.
12 Fuller's testimony of the 55.8.

13 COMMISSIONER HOOD: Okay. Well, I withdraw
14 that.

15 CHAIRPERSON CLARENS: Okay. So any other issue
16 on the findings of fact? Any comment from staff on the
17 findings of fact?

18 MS. KRESS: No, Mr. Chairman.

19 CHAIRPERSON CLARENS: We are only dealing with
20 the findings of facts. Do we agree with the conclusions of
21 law? I do think we do.

22 COMMISSIONER FRANKLIN: I do, Mr. Chairman.

23 CHAIRPERSON CLARENS: Okay. So, therefore, the
24 decision basically says that, one, it be the size of the
25 relevant plan prepared by Brennan, Baird, Gorman & Monk, and
26 we need to fill in whatever exhibit number is in the --

1 MS. KRESS: Commissioner Clarens, I would point
2 out that this is unusual to say substantial compliance.
3 Typically, the words that the Office of Zoning has used in the
4 past --

5 CHAIRPERSON CLARENS: In accordance with the
6 plan?

7 MS. KRESS: -- is in compliance-whatever. I
8 understand why they're using the word substantial, because
9 they aren't specifically talking to the flexibility which is
10 talked about earlier in the findings of fact and conclusions
11 of law, which is the flexibility on the side yards and
12 loading berths that they require.

13 So to me, this needs to be rewritten to state
14 "in compliance" and then to speak to the flexibility which is
15 mentioned under number 59 for the minor deviations with
16 respect to the side yards and loading berths. I think that
17 would be more appropriate.

18 CHAIRPERSON CLARENS: So you're saying that to
19 introduce an element within the decision that addresses the
20 flexibility on the issues that have been identified, and make
21 the PUD to be in compliance or according to the plans that we
22 have approved.

23 MS. KRESS: That's my recommendation.

24 CHAIRPERSON CLARENS: That's fine. Is that
25 okay? Okay, any other issues with the decision?

26 MS. KRESS: I think Number 3 -- there needs to

1 be a decision regarding the lighting by the Commission. There
2 are a couple of proposals, and number 3, I believe, needs a
3 decision of the Commission.

4 CHAIRPERSON CLARENS: Number 3, the lighting,
5 meaning the lighting -- There are two issues of lighting.

6 MR. BASTIDA: Mr. Chairman, they are issues,
7 the lighting of the towers that Mr. Parsons had objection to
8 that.

9 MR. FRANKLIN: Oh, that's right, an option.

10 MR. BASTIDA: You know, it was the option. So
11 I think that the issue there is the lighting of those towers.
12 It remains to be decided by the Commission.

13 CHAIRPERSON CLARENS: And the options that we
14 have would be the five towers are lit or one tower, the
15 central tower over the entrance is lit.

16 MS. KRESS: Or none.

17 CHAIRPERSON CLARENS: Or none.

18 MR. BASTIDA: Or that's what the applicant
19 proposed, but you can decide to lit three or to -- you know.
20 I mean, it's up to you. Then the exhibit will have to be
21 modified by saying that you decided to light so many or light
22 none or light them all or whatever.

23 MS. KRESS: And there are two sets of lighting.
24 So this just needs to be rewritten, but I do believe there
25 needs to be a decision.

26 CHAIRPERSON CLARENS: Right. Very good.

1 COMMISSIONER PARSONS: Mr. Chairman, I would
2 recommend that we allow the entry -- the lantern above the
3 main entry to be illuminated, as they have proposed, and not
4 the four corners. As stated in their letter of June 17th,
5 they would prefer all five, but I don't think they're
6 appropriate.

7 CHAIRPERSON CLARENS: Very good.

8 COMMISSIONER FRANKLIN: I don't want to go over
9 the barricades on this one, but I don't have any problem with
10 the fine language.

11 CHAIRPERSON CLARENS: Yes. I don't want to go
12 to the barricades either, and I would acquiesce to you, but I
13 would like the five towers lit, but that's -- but I don't
14 know. I sort of like the idea of the towers lit up, and I
15 don't understand your arguments. Mr. Hood.

16 COMMISSIONER HOOD: I kind of -- Seems like the
17 five towers -- I thought it was very unique and different.

18 COMMISSIONER PARSONS: I guess we'll have to
19 vote on that. This is New York Avenue, directly down the
20 street from the White House, and I think you're wrong. We'll
21 vote three to one on that. I just think it's too risky.

22 CHAIRPERSON CLARENS: Too much light?

23 CHAIRPERSON PARSONS: Well, what's a 60 watt
24 bulb tomorrow is a 90 watt bulb the next day, and this
25 Commission is gone and nobody knows why it's too bright, and I
26 don't think it's worth the risk. That's what I said at the

1 hearing.

2 There's no way this Commission can say how this
3 should be illuminated.

4 COMMISSIONER FRANKLIN: Do you want to put a
5 cap on the lumens?

6 COMMISSIONER PARSONS: Well, it's one of those
7 unenforceable, who will approve that kind of situation. Well,
8 let's vote on that, and I'll greet you at the corner of New
9 York and 9th for the opening ceremonies.

10 COMMISSIONER FRANKLIN: We'll be easily
11 recognized, because it's so well lit.

12 COMMISSIONER PARSONS: But, you know, I don't
13 like the hotel signs either. I'll talk about those in a
14 minute.

15 CHAIRPERSON CLARENS: Yes.

16 COMMISSIONER PARSONS: But we can vote on all
17 at the same time and get it over with.

18 CHAIRPERSON CLARENS: No, let's do one at a
19 time.

20 COMMISSIONER HOOD: May I ask a question of Mr.
21 Parsons? Mr. Parsons, is the concern that it's not done that
22 way on New York Avenue? I'm not really sure of the concern.

23 COMMISSIONER PARSONS: It's the concept of
24 Pierre L'Enfant and others, including today's society, I hope,
25 that these avenues are diagonal avenues through the city, and
26 that their terminus will be major public buildings.

1 If there's anything along the way that seems to
2 suggest that it's more important in a terminal building, I
3 have problems with that. At one end of this diagonal is Mount
4 Vernon Library, Mount Vernon Square and the Carnegie Library.
5 At the other is the front door to the White House.

6 So any misplaced modifier on that access seems
7 to be blinking away that it's more important than those two
8 buildings is wrong. So I think it's not worth the risk to
9 introduce them.

10 Wash the facade with floodlights and those
11 kinds of things is okay, but not some kind of a beacon along
12 the edge of the sidewalk at 130 feet, even though the pictures
13 look like, you know, it's not very offensive.

14 CHAIRPERSON CLARENS: Well, we --

15 MS. KRESS: I do believe staff can write
16 something regarding the lumens, and I do believe that, while
17 practically ten years from now -- Commissioner Parsons is
18 correct, but I think we can write the lumens and, if it is not
19 at least in my tenure here done to that wattage, it can be
20 enforced by DCRA that those bulbs be changed.

21 CHAIRPERSON CLARENS: I tell you what. I think
22 that it is better to sin on the side of prudence than on the
23 other one. From what you just said, Mr. Parsons, I think
24 that it might be better for the applicant, if and when the
25 building is built, to come back for a modification of this
26 order and ask for the lighting of the other additional four

1 towers if, in fact, the one tower is not objectionable, and at
2 that point perhaps the Commission might change its mind. But
3 it seems to me that it might be better to err on the side of
4 prudence and to be more conservative than not.

5 I think that your planning concepts are well
6 founded and correct. So we'll take a vote. But we have in a
7 sense a consensus. So do we need to take a vote?

8 MS. KRESS: No. If you have a consensus--

9 COMMISSIONER FRANKLIN: Let them build the
10 light in but not turn the switch on. Is that what you're
11 saying?

12 CHAIRPERSON CLARENS: I didn't say that.

13 COMMISSIONER FRANKLIN: Well, but that's what it means.
14 I guess they can throw the switch on and look at it.

15 CHAIRPERSON CLARENS: But we are approving the
16 central lantern to be illuminated as described in the plans
17 and in the text.

18 MS. KRESS: And the wall sconces.

19 CHAIRPERSON CLARENS: And the wall sconces.

20 MS. KRESS: Because they only mentioned
21 lighting one. So both of them should be covered, I believe,
22 under paragraph number 3.

23 CHAIRPERSON CLARENS: And the wall sconces, as
24 they have been presented to us.

25 MS. KRESS: I'm not saying you should. I'm
26 just saying you should address it.

1 CHAIRPERSON CLARENS: Well, I'm addressing it,
2 unless I hear an objection to it. I think they were elegant
3 fixtures.

4 MS. KRESS: Okay, good.

5 CHAIRPERSON CLARENS: Very good. So that will
6 take care of 3. Then the issue of the roof is fairly clear,
7 and I don't have much objection to it, neither in material nor
8 in design.

9 I also reviewed the landscaping, and it also
10 seemed to me that an effort has been made to improve and
11 increase the amount of landscaping on the sidewalk, and it's
12 look good to me.

13 Mr. Parsons?

14 COMMISSIONER PARSONS: It's all right.

15 CHAIRPERSON CLARENS: It's all right. Signage,
16 the issue of signage.

17 COMMISSIONER PARSONS: What they've proposed,
18 as you may be aware, is best seen in these elevations here, I
19 guess, that came with the submission. It shows a total of
20 five signs on this small hotel, which I think is excessive.

21 It also talks about them being 28 inches high
22 and self-illuminated, which is very unusual in this city.
23 It's more the kind of thing that the Marriott would do in the
24 suburbs, not to name specific hotels, but we're more used to a
25 more restrained signage system in the hotels in this city.

26 Normally a bronze plaque on the corner of a

1 building is adequate and, of course, something over the
2 marquee or entrance canopy.

3 You'll notice on the four corners -- or on the
4 corners of 10th Street and again on New York, we have a -- I
5 think the most telling one is the one on New York and K
6 Street, that the sign ends up in this depiction almost a third
7 the width of the hotel.

8 I just don't think we should so go into a
9 situation where we have self-illuminated hotel signs, nor do
10 we need one on New York Avenue when there's one directly at
11 the corner, seen on the other elevation.

12 So I would say back-lighted signs, and only
13 three of them, and they would be facing on the east elevation.
14 I have no -- Well, I do have a quarrel with this height, but -
15 - So that's my suggestion.

16 COMMISSIONER FRANKLIN: Well, Mr. Parsons, I
17 think I agree with you. I have, frankly, not noticed the
18 signs on the south and north elevations. But I would have no
19 objection to a satin finish, stainless steel sign at the
20 hotel. Would you?

21 COMMISSIONER PARSONS: No, as long as it's
22 back-lit. I guess that's my concern. For years we've been
23 trying to discourage self-lit -- internally illuminated --

24 CHAIRPERSON CLARENS: Well, I thought we had
25 discussed that at the hearing.

26 COMMISSIONER PARSONS: I thought so, too.

1 CHAIRPERSON CLARENS: And I thought we said no,
2 this is a -- Do we have any description of this besides the
3 ones that are in the drawings?

4 COMMISSIONER PARSONS: The narrative on the
5 letter that says essentially the same thing. Signs would have
6 internally illuminated channel letters up to approximately 28
7 inches in height.

8 CHAIRPERSON CLARENS: Well, what is that? I
9 think I know what it is, but do we know, in fact, what it is?

10 COMMISSIONER PARSONS: What an internally
11 illuminated channel letter is?

12 CHAIRPERSON CLARENS: Yes.

13 COMMISSIONER PARSONS: Well, it's either
14 illuminated plastic with the letters placed on it, a plastic
15 panel, or it's individual letters like a Marriott Hotel, self-
16 illuminated or illuminated from within.

17 They did not provide an exhibit of that.

18 CHAIRPERSON CLARENS: Can the Office of
19 Planning shed any light on this? Did you have any discussion
20 after our hearing with the applicant on the letters?

21 MR. COLBY: Well, I'm afraid we changed horses
22 in mid-stream. I really can't.

23 CHAIRPERSON CLARENS: I see. And our staff
24 cannot help us with a clarification as to what it is that they
25 are requesting, or maybe we should decide what it is that we
26 want. I know what it is that I think I would like to see.

1 MR. BASTIDA: Mr. Chairman, if I may. When I
2 was with the Office of Planning -- When I used to be with the
3 Office of Planning, we had used caution with a BZA case in
4 which we did extensive research, and I did extensive research
5 --

6 CHAIRPERSON CLARENS: That's for a hotel on
7 13th Street?

8 MR. BASTIDA: Right. -- for you, and you came
9 to the conclusion that any self-illuminating sign is not
10 really beneficial in general to the city, and you wanted
11 backlit signs. So I'm just -- I'm not telling you that I'm
12 advocating that. I'm just refreshing your memory of what was
13 the impact of that story on that particular hotel.

14 CHAIRPERSON CLARENS: And this, the way it is
15 described, is not a backlit sign.

16 COMMISSIONER FRANKLIN: Self-illuminating.

17 CHAIRPERSON CLARENS: Self-illuminating.

18 COMMISSIONER FRANKLIN: Internally illuminated.
19 It says internally illuminated. It's not clear to me what
20 that means, in light of this discussion.

21 COMMISSIONER PARSONS: Well, to me it's a
22 Marriott Hotel. And I'm not singling them out other than
23 they're such an icon that I thought everybody would know right
24 off.

25 CHAIRPERSON CLARENS: Well, let's backtrack
26 here. I think, that, first of all, let's try to divide

1 things. The letters over the -- The name over the canopy
2 would be -- can be, in fact, slightly different than the other
3 ones.

4 COMMISSIONER PARSONS: Yes. Matter of fact,
5 it's smaller. I like them better. They're 18 inches instead
6 of 28.

7 CHAIRPERSON CLARENS: They are smaller, and
8 they are part of an architectural element. So, in fact, they
9 could be backlit.

10 COMMISSIONER PARSONS: Sure.

11 CHAIRPERSON CLARENS: And it's an element that
12 will have light, etcetera, etcetera.

13 MS. KRESS: Now do you mean backlit or do you
14 mean internally lit? I thought you were making a contrast.

15 CHAIRPERSON CLARENS: Internally lit.

16 MS. KRESS: I thought that's what you meant to
17 say.

18 COMMISSIONER PARSONS: Well, the description on
19 the elevation is the same.

20 CHAIRPERSON CLARENS: Well, I'm trying to make
21 a distinction between the two. So we can move forward. So we
22 can say that the letters over the entrance could be as shown
23 in the drawings, meaning generally 18 inches high. But if I
24 understand your concern, Mr. Parsons, the other ones -- Well,
25 then there's another issue.

26 So if we can approve that, then we move to the

1 other remaining four signs, and you're saying that there
2 should not be signs either on the south nor the north
3 elevation of this building?

4 COMMISSIONER PARSONS: Well, at least -- I'm
5 not as concerned about the north. The south, I would object
6 to, yes.

7 CHAIRPERSON CLARENS: So you don't want a sign
8 on New York Avenue?

9 COMMISSIONER PARSONS: No. There will be one
10 at the corner of 10th and New York, shown here, and not one on
11 the other side.

12 CHAIRPERSON CLARENS: And your vision of these
13 letters would be letters that would be metal of some
14 selection. We don't need to establish, but they will be some
15 sort of a backlit metal projecting letters?

16 COMMISSIONER PARSONS: Yes.

17 CHAIRPERSON CLARENS: A letter that projects
18 from the face of that expanse. I don't have a problem with
19 that, if we can describe it.

20 MS. KRESS: I believe staff could pull together
21 --

22 COMMISSIONER FRANKLIN: What is the -- How
23 would you describe the character of what's to be avoided?
24 What are we trying to avoid? I think I'm with you, but I'm
25 trying to articulate what it is we don't like, and I was going
26 to suggest that we approve everything but the signage and have

1 them come back with a better illustration of how they want to
2 treat that in September.

3 MR. BASTIDA: Mr. Chairman, the applicant will
4 have to come for a final approval, and you can specify that at
5 that time, and I believe you can open the record to receive
6 only that.

7 CHAIRPERSON CLARENS: I think that that's the
8 way to proceed.

9 COMMISSIONER FRANKLIN: If we do that, I think
10 they should have some kind of guidance as to what we're trying
11 to avoid here, besides a surplus of signs.

12 CHAIRPERSON CLARENS: It might very well be
13 that is the same thing that they have in mind that we have in
14 mind, but we don't know. We need detail of the -- We don't
15 need to have a typeface, but we need to know what kind of sign
16 it's going to be.

17 MR. BASTIDA: Is the Commission also
18 recommending a size for that, because I heard something about
19 24 or 20 was not really acceptable?

20 COMMISSIONER PARSONS: Yes. You know, if
21 letters 18 inches high on the Interstate highway is adequate,
22 I would think 18 inch would be all right here.

23 COMMISSIONER FRANKLIN: Well, I'm just looking
24 at this and thinking that perhaps we're not being told, but
25 maybe the marquee would have signs around the corner of the
26 marquee in either direction, in which case you wouldn't need

1 it on the building. It doesn't say anything to that effect.

2 CHAIRPERSON CLARENS: Well, no, the marquee
3 does have letters. It says "Hotel."

4 COMMISSIONER FRANKLIN: Where?

5 CHAIRPERSON CLARENS: Again in the north
6 elevation there is a --

7 COMMISSIONER FRANKLIN: Oh, I see. Yes, you're
8 right. It does. Okay. It just says "Hotel."

9 COMMISSIONER PARSONS: Well, I think you're correct in
10 having them submit something to us.

11 MR. BASTIDA: But are you providing a guideline
12 that you are not happy with the height of those letters?

13 CHAIRPERSON CLARENS: Well, let's try to make a
14 decision first on the number of signs. Are we going to
15 approve -- We are not happy with five signs? We want to
16 reduce to three? Is that a consensus? Everybody is on the
17 same page?

18 COMMISSIONER HOOD: No, I'm not on the same
19 page. I want to ask -- and I don't want to keep asking Mr.
20 Parsons questions, but I'm just curious why on the 10th Street
21 side, I believe, you said you don't want a sign over there at
22 all?

23 CHAIRPERSON CLARENS: On the New York.

24 COMMISSIONER HOOD: New York. Why is that?

25 COMMISSIONER PARSONS: To tell you the truth, I
26 don't want any signs on this building. I really don't, and I

1 thought we had a pretty strong policy on this Commission of
2 discouraging this kind of stuff.

3 You know, an address and a map and signs on the
4 marquee are fine with me, three of them, and that's what's
5 submitted here; and suddenly we've got four more, and I just
6 think that's wrong. We just don't -- That's not the way we
7 treat hotels and other retail establishments in this city. We
8 don't.

9 So I'm trying to get it as small as possible in
10 the spirit of compromise, and have them -- I think the best
11 thing to do, rather than us waste another 20 minutes on this
12 this afternoon, is have them submit something and give it some
13 more thought.

14 MS. KRESS: I think, as you formally open the
15 record, I think they probably have heard the discussion and
16 have a sense, and rather than giving them specific instruction
17 --

18 CHAIRPERSON CLARENS: So we want less signs and
19 smaller signs that are not internally lit but backlit, and
20 they are opaque letters that will be backlit.

21 COMMISSIONER PARSONS: That's good.

22 MS. KRESS: So there is consensus to open the
23 record for that one piece of information right now only?

24 CHAIRPERSON CLARENS: That is correct. We will
25 then reopen the record to permit additional material on the
26 issue of signage for this building to reduce the number of

1 signs, to reduce their size, and to control the lighting.

2 MR. BASTIDA: Mr. Chairman, would you set up a
3 deadline, because it has to be submitted to the other party.

4 MS. KRESS: I think we can handle that. We'll
5 handle the deadline.

6 You are now on Number 7, which I would point
7 out, has the word materially in the last sentence on the
8 variations, and I don't know if that is of a concern. It has
9 to do with the necessary possibility to make adjustments with
10 respect to the interior components.

11 CHAIRPERSON CLARENS: I don't have a problem
12 with that with the exception of the -- When they say including
13 partition slabs, we're not talking about the number of slabs.
14 We're talking about the configuration of the slabs.

15 MS. KRESS: Then perhaps the appropriate thing
16 to do is add just what you said, including partitions, slab
17 configuration.

18 CHAIRPERSON CLARENS: Not that they could, even
19 if they wanted to have a slab. I think that that's the
20 intention, and it has to do with some of the mezzanine spaces
21 or two-story spaces they have.

22 Item number 8 -- I think that we've reviewed
23 those plans, and I've reviewed the plans that were submitted
24 as part of the last package, and they seem quite adequate.

25 Item 9 --

26 MS. KRESS: These are our standard, and they

1 have included the three standard paragraphs, number 9, 10 and
2 15, that we normally request.

3 CHAIRPERSON CLARENS: Okay. If I don't hear
4 any further comments, then we will incorporate these findings
5 and conclusions of law into the order with the provision for
6 the signage, as we agreed, and notification for the order
7 itself, and then issue the order for review by NCPC.

8 MS. KRESS: Did you have any other comments?

9 MR. BASTIDA: No, I do not.

10 CHAIRPERSON CLARENS: Then we will deal with
11 the issue of the signage at the time of the final approval.

12 MS. KRESS: After NCPC review.

13 CHAIRPERSON CLARENS: After NCPC review.

14 MS. KRESS: You feel you need a separate motion or is
15 it just the consensus on the findings of fact and conclusions
16 of law and decision?

17 CHAIRPERSON CLARENS: I don't think we need a -
18 - Do we need another --

19 MS. KRESS: I don't think so. I think the
20 order is the order, and the order will be the final order, and
21 I think the concerns are clear. I just asked what you felt
22 more comfortable with.

23 CHAIRPERSON CLARENS: Okay. So that concludes
24 99-2M. Then we move to Item C, 97-7(I).

25 CHAIRPERSON CLARENS: Can we -- This is just a
26 question, because that's a rulemaking case. Should we sort of

1 change the order here and move to 99-1C and 98-17F, and then
2 deal with 97-7 at the end?

3 MR. COLBY: Certainly.

4 CHAIRPERSON CLARENS: That's the question of
5 the Chair. This is just a tentative agenda in the way of
6 order?

7 COMMISSIONER FRANKLIN: I would suggest that to
8 the Chair.

9 CHAIRPERSON CLARENS: Okay, well, let's move
10 then to Item D. and then we'll deal with the SP districts
11 update at the end of the proposed action. Let's move to 99-
12 1C(Fort Lincoln), and I guess the Office of Planning. Go
13 ahead.

14 **III.D. 99-1c (FORT LINCOLN)**

15 MR. COLBY: Chairperson Clarens, the hearing
16 was held fairly recently, and this decision meeting comes
17 before we've had a chance to view the transcript on the case
18 and do a summary of the hearing.

19 So if the Commission takes that up today and
20 the hearing was fairly recent and relatively
21 noncontroversial, the Commission may feel comfortable deciding
22 it without input from the Office of Planning.

23 MS. KRESS: I believe that's the Office of
24 Zoning's recommendation as well.

25 CHAIRPERSON CLARENS: Has either the Office of
26 Planning or our staff or Corporation Counsel had an

1 opportunity to review the homeowner's association package by-
2 law, proposed by-law?

3 MR. BASTIDA: No, Mr. Chairman. The Office of
4 Zoning intent was that, if you approve it, then send it to
5 Corporation Counsel for their review, and then you can talk to
6 them to find out approval.

7 MS. KRESS: I think the idea here was an
8 outline. It was not a final. It was an outline so you could
9 see the kinds of issues, and as I reviewed it, it seems to
10 include those kinds of issues.

11 I'm not sure personally that we need the
12 Corporation Counsel, because this is not the document that
13 would be in place anyway.

14 CHAIRPERSON CLARENS: That is correct. This is
15 a model.

16 MS. KRESS: This is a model and an outline of
17 the way things would be covered, and I believe it satisfies
18 your question, unless there's a problem with something in the
19 model that the Commissioners have found.

20 COMMISSIONER FRANKLIN: But how can we approve
21 something which says we've asked for additional information
22 and left the case open for the following which begins on the
23 bottom of page 6 and the top of 7, when we don't have that, as
24 I gather, for us. Do we?

25 MS. KRESS: Yes, you -- What do you not have?

26 COMMISSIONER HOOD: A,B and C was what was

1 missing.

2 MS. KRESS: What you received --

3 MR. BASTIDA: Earlier today.

4 COMMISSIONER FRANKLIN: Earlier today?

5 CHAIRPERSON CLARENS: No, no, no. The package
6 -- The additional information was received earlier today. It
7 was not in your package.

8 MS. KRESS: It was omitted from the package.
9 Mr. Bastida and I discovered it this weekend, and that was
10 partly why we asked you to come early, and that was handed to
11 you as you walked in.

12 COMMISSIONER FRANKLIN: Oh, oh, that package.

13 MS. KRESS: So that you could review it in the
14 hour before we began the meeting.

15 CHAIRPERSON CLARENS: Well, I don't want to
16 postpone this. I would like to move it forward. I think that
17 it is a good application. I think that the lighting issue has
18 been taken care of. I can see in the plan.

19 I would like to find something that tells me
20 that they are introducing sidewalks.

21 MS. KRESS: No.

22 COMMISSIONER HOOD: They spoke about the
23 sidewalks, Mr. Chair, and I believe that it is not cost
24 effective to do the sidewalk piece.

25 COMMISSIONER PARSONS: Any sidewalk?

26 COMMISSIONER HOOD: Yes.

1 MS. KRESS: You might take a look at the--

2 CHAIRPERSON CLARENS: There is a plan.

3 MS. KRESS: Yes.

4 CHAIRPERSON CLARENS: There is a plan that
5 shows sidewalks, a five-foot concrete sidewalk in a manner
6 that would be --

7 MS. KRESS: I believe sidewalks were added but
8 not everywhere.

9 CHAIRPERSON CLARENS: No, I understand that,
10 and that was the testimony. That was what they agreed to.

11 MS. KRESS: They agreed to add sidewalks?

12 CHAIRPERSON CLARENS: Well, they agreed at the
13 hearing to add sidewalks to one side of the street, but you
14 say that in the --

15 COMMISSIONER HOOD: I've read somewhere. Maybe
16 it was in the material that we received today, but I did read
17 that they said it wasn't cost effective. I think they agreed
18 to show us on the plans.

19 MS. KRESS: It's number 2 on the cover letter,
20 number 2, Exhibit B, site plan revision. This exhibit shows
21 the addition of sidewalks, additional street lighting and
22 refined garage elevations, etcetera. Exhibit B modifies blah-
23 blah-blah.

24 The applicant investigated the feasibility of
25 putting in sidewalks on both sides of the street, but
26 determined that it would be prohibitively expensive to do so.

1 CHAIRPERSON CLARENS: That is correct. So they
2 are agreeing to the plan as shown, with the plan as shown
3 meaning they are agreeing to this plan. They just don't want
4 to do sidewalks on both sides. They are agreeing to sidewalks
5 on one side. I'm talking about this plan. Right?

6 The applicant investigated putting in sidewalks
7 on both sides of the street, because I asked him to do that,
8 but determined that it will be -- both sides of the street;
9 but they are agreeing to one side of the street, which is what
10 they agreed at the meeting -- at the hearing. That's the way
11 I read that statement. That's the way I would propose that we
12 move forward on this. I see somebody nodding.

13 That's the way I read the letter, and that's
14 the way that I read the plan, that they have agreed to build a
15 sidewalk, as indicated on 6 of 7, sheet 6 of 7 of Fort
16 Lincoln, which is part of our package.

17 The issue of lighting that Mr. Franklin raised
18 -- I think that that has been handled. That's been addressed.

19

20 COMMISSIONER FRANKLIN: That's been addressed.
21 Mr. Chairman, I don't quite understand what we're being told
22 on the garage elevations, which is in a drawing that seems to
23 be 4 of 7.

24 MS. KRESS: I'm sorry, I can't hear you.

25 COMMISSIONER FRANKLIN: What are we being told,
26 Ms. Kress, about the garage elevations in these drawings?

1 There's a drawing here that is unlabeled as to number that
2 appears to be the fourth one in. I defer to the architects.

3 CHAIRPERSON CLARENS: Well, they've added two
4 sketches.

5 COMMISSIONER FRANKLIN: Right.

6 CHAIRPERSON CLARENS: One has a recessed door.

7 COMMISSIONER FRANKLIN: That, I can see.

8 CHAIRPERSON CLARENS: Twelve inches behind the
9 plane of the wall of the garage, and in the other one there is
10 a three-foot overhang with brackets.

11 COMMISSIONER FRANKLIN: With a bracket. Now I
12 do see that, but I don't -- One is called Scheme 1, and one is
13 called Scheme 2. Are they trying to tell us that 101 is
14 Scheme 1, 102 is Scheme 2? It doesn't seem to read that way.

15 CHAIRPERSON CLARENS: No, I don't think so. I
16 think that they are basically saying that those are
17 alternatives to the elevations as shown.

18 COMMISSIONER FRANKLIN: Oh, I see.

19 CHAIRPERSON CLARENS: And the letter is not
20 clear, but in the spirit of the hearing what I believe they
21 would want is to have the flexibility to offer these things as
22 options as part of the project.

23 COMMISSIONER FRANKLIN: Oh, I see.

24 CHAIRPERSON CLARENS: So we are not saying that
25 so many of the houses need to be this way and so many of the
26 houses have to be that way, but basically saying that this

1 kind of alternatives should be offered to the marketplace as
2 possibilities, and it is up to us to -- or do we want to
3 establish that -- you know, that we should have -- Every three
4 garages there should be one of these alternatives that create
5 a little bit more interest and shade and shadow and all that
6 kind of stuff.

7 COMMISSIONER FRANKLIN: The cover letter
8 doesn't explain that. I don't happen to have a cover letter
9 in my package.

10 CHAIRPERSON CLARENS: Yes, I didn't get a cover
11 letter. Mr. Hood has one.

12 MS. KRESS: It does say -- We haven't gotten to
13 the findings of fact and conclusions of law, but on page 11 in
14 the findings of fact and conclusions of law it does say the
15 garage elevations shall be constructed in accordance with
16 those shown on the applicant's post-hearing submission marked
17 Exhibit -- of the record.

18 So they are saying --

19 CHAIRPERSON CLARENS: Well, but we have
20 basically three alternatives. We have sort of kind of a flat
21 garage, regular garage. Then we have one with the door
22 recessed, and then we have one with the roof overhang,
23 projecting three feet, and we have no way of controlling which
24 one they are going to build.

25 MS. KRESS: I would say the elevations don't
26 read that way. All of the elevations read as if there is at

1 least minimally some recessed -- I mean, see what I'm saying?
2 There isn't a section cut.

3 In fact, the edge of the garage, by the virtue
4 of how it's detailed at that small scale, appears that all of
5 these are recessed.

6 CHAIRPERSON CLARENS: So what you are saying
7 basically is that Scheme 1 is -- that all garages will have
8 either Scheme 1 or Scheme 2.

9 COMMISSIONER FRANKLIN: Well, that's what I
10 would like to see.

11 MS. KRESS: Yes.

12 COMMISSIONER FRANKLIN: And I think they intend
13 that from their cover letter.

14 CHAIRPERSON CLARENS: That sounds good to me.
15 Okay. So basically, Scheme 1 and Scheme 2 are, in fact, what
16 we are approving?

17 MS. KRESS: That would be the way I read this.

18 CHAIRPERSON CLARENS: That is fine. So all
19 garages will either have Scheme 1 or Scheme 2 as their design.

20 MS. KRESS: And we could add those words, if
21 this is so approved, under decision Number 12 on page 11. We
22 can say "in accordance with Scheme 1 and 2 as shown on the
23 applicant's post-hearing submission marked as Exhibit blank."

24 CHAIRPERSON CLARENS: He's requesting they not
25 participate in --

26 MS. KRESS: No, he did not.

1 CHAIRPERSON CLARENS: And we didn't make a move
2 to approve or disapprove this case. Do you care to make a
3 motion?

4 COMMISSIONER HOOD: Can I just also add that I
5 believe at the hearing I asked for a letter from the ANC for
6 the full Commission. While this isn't a letter for full
7 Commission vote, I think we would still give it great weight,
8 because it is ANC, but it's not -- The regulations state the
9 full Commission, and I notice that this letter was just coming
10 from the Commissioner, which I'm sure --

11 CHAIRPERSON CLARENS: A single.

12 COMMISSIONER HOOD: SMD, right, but I'm sure
13 he's done his homework, but I just wanted to let the record
14 reflect that, if we could. But if it's too late, then we can
15 use this and just give it great consideration.

16 MS. KRESS: And I think the way the findings of
17 fact and conclusions of law are written, it makes it clear
18 that it is just the ANC.

19 CHAIRPERSON CLARENS: Okay. Can we move
20 forward with this. Do I hear a motion to approve?

21 COMMISSIONER HOOD: I make a motion to approve.

22 COMMISSIONER FRANKLIN: Second.

23 CHAIRPERSON CLARENS: It has been properly
24 moved and seconded, and we've had discussion on this case, and
25 pending review of the findings of fact and conclusions of law,
26 all in favor signify by saying Aye. Opposed? The Ayes have

1 it, and now we need the findings.

2 MR. BASTIDA: Mr. Chairman, let me record the
3 vote, if I may. It's my understanding that Mr. Hood moved it.
4 Mr. Franklin seconded, and then it was approved three to zero,
5 Mr. Parsons abstaining.

6 CHAIRPERSON CLARENS: That is correct.

7 MS. KRESS: Mr. Chairman, you may wish to just
8 see if anyone has any comments on the findings of fact and
9 conclusions of law in general, and then again go to the
10 decision for final discussion.

11 CHAIRPERSON CLARENS: Any comments on the
12 findings?

13 COMMISSIONER HOOD: Mr. Chair, on page 2,
14 number 5, I believe the elementary school is stated
15 incorrectly. It should be Thurgood Marshall Elementary
16 School, and it's stated as the Lincoln Elementary School.

17 MS. KRESS: Thank you. We will doublecheck
18 that.

19 CHAIRPERSON CLARENS: We can doublecheck that
20 and make sure that that is correct.

21 MS. KRESS: Certainly. Any other comments
22 prior to getting to page 10?

23 CHAIRPERSON CLARENS: Mr. Franklin, any other
24 comments on the findings?

25 COMMISSIONER FRANKLIN: No.

26 CHAIRPERSON CLARENS: Okay. So the decision

1 then says that the PUD shall be developed in accordance with
2 plans prepared and materials submitted by the
3 architect/engineering firm of Devereaux and Associates and
4 VICA, Inc., as modified with the guidelines and conditions of
5 this order.

6 The project shall be a residential development.
7 That's the description of the project. I don't think we need
8 to go into that. Landscaping will be in accordance with the
9 plans that we have reviewed. The height of the individual
10 homes to not exceed 40 feet nor shall they exceed three
11 stories. The lot occupancy shall not exceed 80 percent.

12 MS. KRESS: Number 6 has a big typo. They left
13 out the word interior building components.

14 COMMISSIONER FRANKLIN: Yes, I was wondering
15 about that.

16 MS. KRESS: Very large skip in meaning, which
17 I'm sure it's just a typo.

18 CHAIRPERSON CLARENS: We want to add then
19 "interior."

20 MS. KRESS: Interior building components,
21 including partition, slag, hallway columns, stairways,
22 etcetera, etcetera.

23 CHAIRPERSON CLARENS: Number 7 is the
24 flexibility of various design amenities be included in the
25 individual single family or condominium units.

26 COMMISSIONER FRANKLIN: I don't know what that

1 means. That seems to me to be quite --

2 CHAIRPERSON CLARENS: I believe, frankly, that
3 it is the intention of this issue that deals with the addition
4 of such things as fireplaces, chimneys. We talked about
5 different kinds of porches. We talked about different
6 treatments of the elevation, the use of brick, the use of
7 siding, etcetera, etcetera.

8 So I assume that --

9 MS. KRESS: I think the problem is the word
10 amenities. I don't know if that's the appropriate word.
11 Options?

12 COMMISSIONER FRANKLIN: Are these interior or
13 exterior?

14 MS. KRESS: I think that's interior and
15 exterior, and I think the sense should really be options
16 instead of amenities.

17 COMMISSIONER FRANKLIN: Well, I'd like to have
18 them refer to something we've been shown. I mean, we were
19 shown what the options were.

20 MS. KRESS: I believe that will be covered in
21 like number 1, all the exhibits. Certainly, the porches are
22 covered in a separate one. The garage is recorded in a
23 separate one.

24 If you would leave those to staff, let me make
25 sure everything -- We will make sure everything is covered.
26 We'll change the word to option.

1 CHAIRPERSON CLARENS: I think that if we can be
2 more specific on number 7 and say what are these things that
3 we're granting flexibility on.

4 MS. KRESS: Yes, and call them options rather
5 than amenities.

6 MR. BASTIDA: Mr. Chairman, the staff can list
7 that, and then you can go over it at the final decision to
8 make sure that, in fact, it reflects exactly what you wanted
9 to say.

10 CHAIRPERSON CLARENS: Correct. Number 8 deals
11 with our request that a porch be shown in at least one of the
12 models that they are proposing to build, in order to encourage
13 the people buying the porches.

14 The lighting -- we dealt with that; sidewalk,
15 we've dealt with that. I would like to request that staff
16 reviews again the homeowner's association model specifically
17 for the issue of the funding of the association. Whatever
18 provisions have been made for the funding of the association
19 by the developer, I think it is important that we are well
20 grounded there.

21 MS. KRESS: We can present that with the final
22 draft order for your review.

23 CHAIRPERSON CLARENS: I think that we need to
24 refer to the specific page of the exhibit for the sidewalks as
25 they appear in this package that we received today, as well as
26 the lighting, as well as the garage elevations, as we've just

1 discussed.

2 MS. KRESS: I have a note, Mr. Chair, that one
3 of the things that was not -- was discussed but not
4 specifically shown was the brick turning the corner.

5 CHAIRPERSON CLARENS: That is very important.

6 COMMISSIONER FRANKLIN: Yes.

7 CHAIRPERSON CLARENS: That is very important,
8 and that should be a condition of the order, that whenever
9 brick facades are used, that the brick should turn the corner
10 for a minimum of --

11 MS. KRESS: I believe the testimony was --
12 Well, the testimony, they said, I believe, was four inches;
13 but it can be whatever the Commission desires, but that was
14 only in the testimony.

15 COMMISSIONER FRANKLIN: I defer to the Chair,
16 whatever you think.

17 CHAIRPERSON CLARENS: Well, I don't like them,
18 but you know, if we have to have them, might as well turn the
19 corner for more than four inches. So I would say 12 inches
20 should be pretty good.

21 COMMISSIONER HOOD: Is there a standard, Mr.
22 Chair, on that, on the brick turning the corner. Is
23 there a standard, normal? What do you normally see, 12
24 inches, four inches?

25 MS. KRESS: Actually, normally, I think you see
26 none. You see the wafers.

1 CHAIRPERSON CLARENS: You see a one-inch wafer
2 of brick applied to the front of that now; but a four-inch
3 will be the width of a brick. If you are basically adding a
4 brick on the back of that around the corner, the brick is on
5 the outside of the facing of the house anyway. So it's just a
6 matter of taking the shelf on which the bricks are laid around
7 for one foot behind the face of the house.

8 So it probably does increase the cost a little
9 bit, but we discussed it.

10 COMMISSIONER HOOD: Well, I have no problems
11 with that. I really would object to putting it in the order,
12 because, frankly, I don't see the significance. I know it
13 must be somewhere, but I don't see the significance of four
14 inches of brick going around the side of the house.

15 CHAIRPERSON CLARENS: Well, it makes the brick
16 a little bit more substantial. It is pretty insubstantial
17 anyway, and you heard the discussion that we had at the
18 hearing. But at least it doesn't make this kind of, you know,
19 western town sort of facade. It gives a little bit more
20 visual weight. That's the only way to say it.

21 I don't think that it is an imposition on the
22 applicant, and I think that it will enhance the project
23 somewhat.

24 MS. KRESS: Is there consensus on that issue?

25 CHAIRPERSON CLARENS: Is there consensus on
26 that?

1 COMMISSIONER FRANKLIN: Yes.

2 MS. KRESS: And it's 12 inches? Thank you.

3 COMMISSIONER FRANKLIN: At least. At least.

4 CHAIRPERSON CLARENS: The balance are again
5 standard provisions of the orders, the issue of the source of
6 funding agreement, the memorandum of understanding with the
7 Department of Human Rights, the issue of the covenant.

8 MS. KRESS: You have three standard paragraphs,
9 the 13th and 14th and 18th, which are here appropriately.

10 CHAIRPERSON CLARENS: Very good. I don't see
11 any other issue concerning the order. Any other issue that
12 you want to deal with? Does staff have any other issue with
13 this order?

14 MS. KRESS: No.

15 MR. BASTIDA: No, Mr. Chairman.

16 CHAIRPERSON CLARENS: Okay. That concludes
17 then the discussion on 99-1C, and we've already voted on it.
18 It's approved, and so we move forward and we'll say it in
19 final action.

20 MS. KRESS: And that's when the order will be
21 official then.

22 CHAIRPERSON CLARENS: Correct.

23 COMMISSIONER FRANKLIN: I think this must set
24 some kind of a record to have a public hearing on June 24th
25 and a proposed order on July 12th.

26 MS. KRESS: We hope that to be.

1 CHAIRPERSON CLARENS: It's the wave of the
2 future.

3 MS. KRESS: More of the future. Absolutely.

4 CHAIRPERSON CLARENS: Okay. next proposed
5 action has to do with 98-17F, the Florida Rock project.

6 **III.E. 98-17F (FLORIDA ROCK)**

7 CHAIRPERSON CLARENS: I believe that we have
8 all four Commissioners voting in that case.

9 MS. KRESS: I believe that to be true

10 CHAIRPERSON CLARENS: Okay. My first question
11 would be are we ready to move forward on this case? I'm
12 addressing the Commission.

13 COMMISSIONER FRANKLIN: Mr. Chairman, let me
14 say I think that this applicant has made a very comprehensive
15 submittal in response to the questions we have posed.

16 I have gone through 50 percent of it. I
17 haven't gone through the whole thing, and I would be aided by
18 having a review by Corporation Counsel and the Office of
19 Planning in terms of all of the items that have been
20 submitted. k

21 It's really a tour de force, and I do believe
22 it's been, at least on the surface, very responsive to the
23 concerns that we have expressed.

24 MS. KRESS: I have reviewed it in depth, and it
25 is a very complete response to everyone of the issues that we
26 have noted.

1 COMMISSIONER FRANKLIN: Are you satisfied, Ms.
2 Kress, that this is in a posture ready to be voted on?

3 MS. KRESS: Yes, I do. I do feel, however,
4 that some of the concerns such as having Corporation Counsel
5 review the covenants is appropriate. I do also think it is
6 appropriate -- There is a lot of new information presented
7 here -- that the Office of Planning take the time, depending
8 on what the Commission desires and the necessity of this
9 project to move ahead.

10 I think it would be worth hearing from --
11 having a more in depth analysis done by Office of Planning on
12 all of these issues -- I mean, on all of this response, which
13 I believe was your suggestion, Mr. Franklin.

14 COMMISSIONER FRANKLIN: Well, then you do not
15 think it's ripe for a vote?

16 MS. KRESS: Oh, I personally do, but the
17 covenants typically -- and we have Corporation Counsel here.
18 The covenants typically are worked out with Corporation
19 Counsel and their approval. Is that not -- Perhaps
20 Corporation Counsel --

21 MR. BERGSTEIN: The PUD that relates to a
22 covenant -- I'm sorry. The covenant that relates to a PUD is
23 worked out after the order has been finalized. It's just a
24 question of making sure that the covenant conforms to the
25 conditions.

26 MS. KRESS: There are several legal agreements,

1 and you might take a quick glance. But there are several
2 legal agreements that are intended to be a part of the
3 covenant. Now that's a little different than the covenant
4 agreement itself.

5 MR. BERGSTEIN: And is it the Commission's
6 concern that before they vote, they want to make sure that
7 these agreements are either (1) lawful or (2) do what it is
8 the Commission expects the covenant to do? What is it that
9 you are looking for at this period?

10 MS. KRESS: I believe that, initially, that
11 comment came from Commissioner Franklin. So perhaps he could
12 answer that.

13 COMMISSIONER FRANKLIN: Well, to answer Mr.
14 Bergstein's question, all of the above.

15 MR. BERGSTEIN: I'd be glad to look at the
16 covenants and the attached agreements.

17 MS. KRESS: But typically, the covenant is
18 worked out -- The actual covenant is worked out after?

19 MR. BERGSTEIN: That's correct.

20 MS. KRESS: And so that is something that --
21 and then if that can't be worked out and if there's a problem,
22 then it would return to us. Is that not correct ?

23 MR. BERGSTEIN: If it can't be worked out, I
24 suppose --

25 MS. KRESS: I mean legally. If legally it was
26 not sufficient.

1 MR. BERGSTEIN: If we couldn't get the -- If we
2 felt that a covenant -- that the conditions of this required
3 certain things and that the covenant -- that the applicant
4 wouldn't agreed to language that we felt actually was
5 consistent with the things required in the order, we would
6 report it to you; because we wouldn't sign off on the legal
7 sufficiency.

8 MS. KRESS: And that would apply both to the
9 covenant itself as well as legal agreements that would be
10 referred to in the covenant?

11 MR. BERGSTEIN: I'm not sure what these legal
12 agreements are. If it's an agreement between the District and
13 the applicant, that's one thing. If it's an agreement between
14 --

15 MS. KRESS: For example, the two third parties?

16 MR. BERGSTEIN: We would look at it, because
17 the agreement -- If it was an agreement, a binding agreement
18 between two third parties, and you want to make sure that we
19 agree that the agreement said what was your expectation that
20 it would say, we would let you know that. That's as much as
21 we can do, but we can't renegotiate agreements between the
22 parties, but what we could do is tell you that -- If you
23 expected the covenants required an agreement to do X and we
24 didn't feel the agreement really did X, we would advise you of
25 that, and then you would inform the parties you need to
26 renegotiate an agreement that is consistent with what you

1 thought the covenant required.

2 CHAIRPERSON CLARENS: Well, let me tell you --
3 Well, it seems to me that then we're ready to proceed. It
4 seems to me that we can at least go a little bit further than
5 to postpone it. I think that we can begin discussions.

6 So I would then entertain a motion to initiate
7 the discussion to either approve or deny this application or
8 do we want to discuss it before making a motion?

9 COMMISSIONER HOOD: I think in order we've done
10 previously, I think we've made a motion to approve it and then
11 we discussed it. That's how we've been doing so far this
12 afternoon.

13 CHAIRPERSON CLARENS: Well, or to deny.

14 COMMISSIONER HOOD: But I would make a motion
15 to approve this application.

16 CHAIRPERSON CLARENS: Do I hear a second?

17 COMMISSIONER FRANKLIN: I'll second.

18 COMMISSIONER PARSONS: Mr. Chairman, I'm
19 confused. I thought we were going to ask the Office of
20 Planning to take a look at this and give us a report, and also
21 for the Corporation Counsel to look at the conditions that are
22 before us and the covenants. But now you're ready to move
23 ahead. Is that what you just decided?

24 COMMISSIONER HOOD: I believe how we've been
25 doing it so far today -- and I'm trying to get in synch with
26 it myself -- we've been voting to either approve or deny, and

1 having discussions, and then we do our final order.

2 Correct me if I'm wrong, Mr. Chair. We do our
3 final and then we put the other pieces in. At least, that's
4 how we've been doing it.

5 CHAIRPERSON CLARENS: Well, either we're going
6 to discuss it or we're not going to discuss it. We're going
7 to discuss it. We've been using a motion and then using the
8 discussion. That's the way we've been doing it. That's the
9 way we did it before. That's the way we've done it in the
10 past.

11 Now the question is whether we want to discuss
12 it at all or whether we want to refer this package, which is
13 done on Friday, back to the Office of Planning for review.

14 My concern, to be perfectly honest, with this
15 application continues to be the same one that I had at the
16 time of the hearing, and that is the linkage of this applicant
17 to the housing component of this application and their
18 responsibility for it.

19 I haven't had time since this I got this on
20 Friday to have a clear idea of whether that situation has
21 changed or not, and that's why I am a little bit concerned
22 about proceeding with this thing. But maybe there is in the
23 review that the staff has done and the review that perhaps
24 some of the other Commissioners have done -- sufficient
25 information to proceed.

26 That was my concern. My concern was that the

1 applicant was saying, well, we're going to build some housing
2 when the conditions are, you know, fine and appropriate, and
3 when and if that happens, then we will build it.

4 I don't know that that has been clarified.

5 MS. KRESS: I could speak to that and show you
6 where that is, should you decide to discuss that.

7 CHAIRPERSON CLARENS: That's my major concern.
8 Otherwise, I can see us going through and moving. But if you
9 are more comfortable, Mr. Parsons, with sending this back to
10 both of our staff, our staff and to the Office of Planning for
11 further review and comments, we can do it that way.

12 MS. KRESS: I don't want to misspeak -- Excuse
13 me. I just want to make sure everyone -- There is an Office
14 of Planning report here. It just does not -- and it speaks to
15 the additional materials that were requested by the Zoning
16 Commission and which we have received.

17 What it does not speak to is evaluating the
18 materials that were received. I just wanted that to be very
19 clear. I'm sorry for interrupting.

20 COMMISSIONER PARSONS: This is simply a hearing
21 summary of last December's hearing.

22 CHAIRPERSON CLARENS: Correct.

23 MS. KRESS: Right. With a listing of the
24 outstanding issues.

25 CHAIRPERSON CLARENS: The difficulty we're
26 having is that this is, in fact, a major office that we have

1 in front of us. I mean, this is -- and we received it -- I
2 received it Friday night, and this is -- which is fine.
3 That's typically when we receive our package.

4 COMMISSIONER FRANKLIN: It's not fine.

5 MS. KRESS: Yes, and we will try in the future
6 for large packages -- I know this was a very tough agenda --
7 to get significant pieces such as this out as soon as we get
8 them, so that you have as much time as possible to review
9 them.

10 COMMISSIONER HOOD: Mr. Chair, if I can just
11 add, I, too, have a concern about the residential piece as
12 opposed to coming back to us when the market is ready for the
13 residential piece in ten and 11 years, but I figure we would
14 discuss that at a later time. But let me just say that,
15 through my going through the document -- and I thought, like
16 Commissioner Franklin said, the applicant did an excellent job
17 in coming back with us.

18 It's very resourceful, and I think we should
19 put this on the expedited move, because in my tenure here on
20 the Commission I haven't seen anything on that side of town,
21 and I think this is a good project that would jump start that
22 particular area, and I think it would trickle out to the whole
23 area.

24 So I'm not in any favor of prolonging it, but
25 as long as all the other Commissioners get the information
26 that they have, I'm ready to move forward.

1 CHAIRPERSON CLARENS: Yes, and I hear you, and
2 I agree except that this whole project is predicated on the
3 idea of obtaining a contract with a Federal agency to be major
4 tenant in this building, and there is no great -- That's not
5 going to happen in the very immediate future. It's going to
6 happen, but it's not going to happen within the next six
7 weeks.

8 So I mean, if the staff can guide us through
9 the issue of the housing amenities package, I am willing to
10 proceed with how the motion on the table has been seconded,
11 and we can proceed with discussion of the case.

12 COMMISSIONER FRANKLIN: Well, Mr. Chair, it's
13 the amenity package that I was really addressing when I said I
14 was not ready. I think that, from the architectural
15 standpoint of the project, they have been responsive. I have
16 no problem with what they are proposing. It's an improved
17 proposal.

18 If there is some way we can indicate a sense of
19 the Commission that we are going to move forward with this
20 project subject to whatever refinements or conditions relate
21 to the amenity package, I would certainly be in favor of that.

22 MS. KRESS: May I just point out to you, if you
23 look at the findings of fact and conclusions of law, page 26
24 is called the development of the amenities site generally, and
25 page 26, 27, 28 deals with the maritime education, the
26 terminus park.

1 Page 29 deals with the residential development.
2 These are all subheadings under the development of the
3 amenities site, and then page 30 deals with the covenants
4 burdening and binding the amenities site.

5 So, basically, the decision is a good summary
6 of what I have evaluated in the proposal -- I mean in the
7 additional information itself. So I just wanted to point that
8 out, that if you wanted a quick summary of the amenities site
9 and what's included in it, you might want to take a few
10 minutes break, if you felt like you wanted to go ahead and
11 review that piece.

12 CHAIRPERSON CLARENS: Yes, and that's exactly
13 what we discussed in the hearing, and that's what I'm having
14 difficulties with. I think it's Item 3 of the residential
15 development in Item B(3).

16 You have that mandatory residential development
17 shall commence on parcel 3 no later than one year after the
18 date that market rate residential development on parcel 3 is
19 determined to be economically feasible. So mandatory
20 residential development may not be required to be commenced
21 earlier than the tenth anniversary of the conveyance date.

22 MS. KRESS: And there is-- Now they also set up
23 this market rate model. The only problem I had with the --
24 personally, as I was reviewing it, was that this was left
25 open-ended, that there was -- you know, that things were
26 discussed about the residential development and waiting for

1 the market to be appropriate, and we asked them to set up some
2 kind of a model of when the market would be appropriate, and
3 they've done all of that.

4 The problem is there is absolutely no end to
5 when that market rate time has to be established.

6 COMMISSIONER FRANKLIN: In other words, it may not be -
7 - it may never become economically feasible. Is that what
8 you're saying?

9 MS. KRESS: That's the way I --

10 MR. BASTIDA: Yes, that's correct.

11 COMMISSIONER HOOD: And I believe some of the
12 key support and some of the supporters were very pro
13 residential going down the road. That's why I had a problem
14 when I read beginning on the 11th anniversary of conveyance
15 date that such and such may happen; if not, we'll come back
16 with another report. So we could be talking about 15 years.

17 MS. KRESS: Absolutely.

18 COMMISSIONER HOOD: And that's what I basically
19 had a problem with. Other than that, I thought it was a good
20 project.

21 CHAIRPERSON CLARENS: Well, yes, but this is an
22 intrinsic component of the project, and I think it is an
23 important component to the city. So we need to try to figure
24 that out. We cannot separate them. They are together.

25 MS. KRESS: Certainly, you could request
26 changes on when things were to be begin, as well as put a cap

1 on the maximum date by which things had to be done. You could
2 start it whenever -- I mean, not whenever, but at least
3 propose to start it at whatever date you feel is appropriate,
4 and then put a cap on how long you will consider leaving it
5 open to the feasibility of the market rate.

6 CHAIRPERSON CLARENS: What is the sense of the
7 Commission? How do you want to proceed? I think that the PUD
8 is a fine application. It's a good building. I think it's a
9 very fine architecture. I think that it will be -- there will
10 be, you know, the scale, everything -- I think it's fine.

11 The problem that I have is that this issue of
12 the residential development is a -- The developer has taken no
13 responsibility for making it happen.

14 COMMISSIONER HOOD: Is there a way that we
15 could write an order where he will have responsibility? I
16 believe first, even before we get to the residential piece, we
17 have to have some enticement. I know that's a given, and
18 that's understood. So we have to start somewhere.

19 To just say let's hold off and wait until we
20 address this piece, this piece will not happen until that
21 other piece starts and is in progress to the point where
22 people would want to come down there enticed and want to
23 invest in that area.

24 So we're going to have to start somewhere. And
25 I agree, the residential piece needs to be there. It's just
26 the fact of how to institute it so it will be mandatory and

1 it's there.

2 CHAIRPERSON CLARENS: Mr. Parsons, you've been
3 very quiet.

4 COMMISSIONER PARSONS: Well, you know I'll
5 oppose this. So I really don't want to jump in and influence
6 you. But I was confused, because at the beginning you seemed
7 to sense some need for staff analysis, and now you're
8 proceeding. That's all I was trying to do. I don't like this
9 project any better than I did the first time.

10 Now that you've invited me, I think this is a
11 significant precedent we're setting with this amenity, and I
12 think we ought to do it with caution and make sure that what
13 we're doing here is not setting a precedent that others will
14 come with housing linkage in sites that are not yet ready or
15 available and come in with this market rate argument in a much
16 different context.

17 COMMISSIONER FRANKLIN: Maybe I missed it,
18 because I didn't have much time to review all this material;
19 but suppose the housing does not become economically feasible
20 after, you know, 13 years, 12 years or whatever. What takes
21 its place? A park?

22 MS. KRESS: I presume that -- I mean, the
23 documents presume that at some point it will become feasible.
24 I did not read myself -- or don't recall reading what would
25 happen.

26 In the interim, it is a park. It is -- From

1 the eleventh anniversary -- The park is -- I was going to
2 point it out to you, the terminus park. Here, it's on page
3 28, Item 2, development of the terminus park shall occur not
4 later than -- Oh, I'm sorry, no. That speaks for itself. I'm
5 sorry.

6 The issue of -- shall be developed and
7 maintained in a park-like setting. I knew I had read that, to
8 be developed and maintained in a park-like setting and
9 condition until residential development commences. That's on
10 page 30, excuse me.

11 COMMISSIONER FRANKLIN: That's all I saw what
12 we could end up with after 30 years and, of course, housing is
13 the major amenity.

14 MS. KRESS: I do think that is a problem that
15 needs to be addressed.

16 CHAIRPERSON CLARENS: Well, I sense that -- I
17 really sense that we are not ready to move it forward. I
18 think that this issue has to be addressed, and I think that it
19 needs to be referred back to the Office of Planning,
20 especially this issue of the residential component, and we
21 need some specific recommendations as to what language to
22 place in our order to tighten this requirement and to see --

23 MS. KRESS: Excuse me, Mr. Chair. Could we
24 perhaps reopen the record for the specific information? I
25 think that, from what I'm hearing, there is a consensus of
26 uncomfortableness with the open-endedness of the model on the

1 market rate feasibility.

2 CHAIRPERSON CLARENS: Yes, but this was
3 discussed at the hearing, and the applicant heard us, that we
4 were very uncomfortable with this open-endedness, and yet we
5 have the same situation coming to us in their proposed
6 findings of fact.

7 So I'm not sure that that's going to change.

8 MS. KRESS: Well, if we opened and say there
9 needs to be a conclusion. It can't be left totally open-
10 ended. There needs to be a final, that we asked them to
11 evaluate how to -- a cap or some kind of methodology to --

12 CHAIRPERSON CLARENS: Yes, I would be inclined
13 to open the record just simply to deal with that issue, and
14 get official information.

15 MS. KRESS: I would feel more comfortable with
16 that coming from them rather than from Office of Planning or
17 Corporation Counsel or ourselves. In the end, that may be
18 what happens, but I think it would be very reasonable to open
19 the record and let the applicant propose to us how to finally
20 cap this deal on the amenities.

21 COMMISSIONER HOOD: Mr. Chair, for my
22 clarification, what are we asking? I know what we're asking.
23 We're asking them to give us a more definite resolution to the
24 residential piece. But is that a fair question with the
25 market -- I mean, we can't tell what the market is.

26 I mean, I, too, would like to see this dealt

1 with, but I'm just asking us to ask ourselves, is that a fair
2 question for us to ask them to tell us what the market is
3 going to be ten -- I hope it wouldn't go ten years,
4 personally, but is that a fair question for us to ask them?
5 How would we ask them?

6 COMMISSIONER FRANKLIN: Well, it seems to me,
7 Mr. Hood, that we want to know -- Suppose after a certain
8 period of time -- I don't know which period I would choose --
9 that the project has been built but no housing has ever been
10 built, and an objective analysis would indicate that housing,
11 for whatever reason, is not economically feasible.

12 Is there some substitute at a given time that,
13 pursuant to the Commission's decision, would be triggered?

14 MS. KRESS: See, to be clear here, the
15 residential doesn't even start at the earliest until year ten.

16 COMMISSIONER FRANKLIN: I know.

17 MS. KRESS: I'm sorry. I was saying that for
18 Commissioner Hood's benefit. They're not even proposing that
19 it could start before year ten. So the residential component
20 will only even be considered at year ten, and then forward.

21 COMMISSIONER FRANKLIN: Now if -- Could you
22 explain, Ms. Kress, what this market standard is, or model?
23 Where is this?

24 MS. KRESS: The market model is 13(b).

25 MR. BERGSTEIN: Isn't that the proposed model
26 standard for determining when market rate residential

1 development is feasible? Is that what we're talking about?

2 MS. KRESS: Yes.

3 COMMISSIONER FRANKLIN: You were reading from
4 where?

5 MR. BERGSTEIN: I'm reading from --

6 MS. KRESS: 13(b).

7 MR. BERGSTEIN: It's the last half.

8 COMMISSIONER FRANKLIN: I guess I never got
9 there.

10 MR. BERGSTEIN: And if you don't mind, I
11 suggest, as you look at these things, you ask yourself do they
12 themselves represent hard, objective standards or do they
13 represent themselves somewhat subjective criteria.

14 Speaking of evidence of strong sales, for
15 example, what does strong sales mean? Evaluation of the rate
16 to development cost, evaluation in relationship to -- Well,
17 it's a comparison, but in what sense are they compared?

18 There seems to be a somewhat nebulous standard,
19 and again the entire model only allows something to be deemed,
20 I assume by the applicant.

21 Really, your choices are either to permit that
22 degree of what amounts to large discretion or for you to
23 trigger the -- or an outside third party to trigger the
24 development when they deem this model to be satisfied, or to
25 have some sort of an arbitration. But the way this is set
26 out, it is left entirely within the discretion of the

1 applicant, both in terms of when to deem it and the subjective
2 evaluation of these what amount to evaluation factors as
3 opposed to cold and hard data that you could point to and say
4 this has indeed been met.

5 CHAIRPERSON CLARENS: Well, and in answer to
6 Mr. Hood's earlier question, it seems to me at this point that
7 what we need from the applicant is an alternative. A
8 residential component is important to us, is important to this
9 Commission, is important to the city as part of the approval
10 of this PUD.

11 If we are not to get it because the market
12 conditions are simply never developed sufficiently, and that
13 could happen -- maybe it won't, but maybe it will. If they
14 don't, then what happens?

15 Then do we just get a park, and that's all we
16 get? What I would like to see is a proposal for an
17 alternative. If after X number of time, whatever that is, 11
18 years, 12 years, 50 years, whatever it is, we cannot make the
19 housing work, then something else is going to happen that is
20 going to benefit the community.

21 COMMISSIONER HOOD: Mr. Chairman, I believe
22 we're really going to have to put a time -- give some
23 extensive time to that, because the residential piece is what
24 attracted me to this whole piece here.

25 Normally, when -- I've seen, when those things
26 happen, it seems like the office use then comes in, and then

1 it takes over, and I'm not saying what the applicant may do or
2 may not do, but I know that that's going to be heavily
3 weighted office use. Then our waterfront would not be like
4 the Baltimore Harbor and other waterfronts. We'll still be
5 going over to Baltimore as opposed to going right down here in
6 the Navy Yard.

7 COMMISSIONER PARKER: How many of you voted on
8 the first stage, when I think about it, but the only reason we
9 got an affirmative vote was this housing component, because
10 the developer was being -- asking to be relieved from zoning
11 that we had literally passed two months ago to try to achieve
12 the kind of waterfront we have in Baltimore.

13 He first came forward with a hotel, and then
14 came forward with this proposal. To allow that to escape is
15 unfortunate.

16 There's a lot of attention and concern by
17 Sharon Ambrose and others about the future of this
18 waterfront, and I think the South Capital Street corridor is
19 going to become a real amenity in the city in the next ten or
20 15 years, and this housing probably will come. But we don't
21 want a modified PUD in here like we had two hours ago saying,
22 gee, I want to build more office.

23 So I think you're right. We need an
24 alternative, either that or dedicate this to a park, develop
25 it and get it to the city before they could have occupancy,
26 and get on with it, go one way or the other, but not have

1 something hanging out there.

2 COMMISSIONER HOOD: My concern was that we give
3 them enough time -- or they be allowed enough time to make
4 that a viable community where people want to invest and go buy
5 a piece of property down there, and that's my concern. Ten
6 years is probably not going to do it, but I guess that will
7 come at a later time.

8 MS. KRESS: Well, no, I thought the suggestion
9 on the table was to perhaps open the record for -- and I don't
10 know what the Commissioners decided, but under discussion was
11 is opening the record for the applicant to propose some
12 resolution, either a cap or some other alternative of what
13 happens if and when the market rate model doesn't work within
14 whatever number of years.

15 I would also reiterate what Corporation Counsel
16 has said, that there is a potential to insert ourselves into
17 the market rate housing by naming a third party or a third
18 party to be named later such as in an arbitration to really
19 help deal with your issue of is this really not ready, so that
20 we have an outside, objective opinion rather than just the
21 applicants themselves.

22 COMMISSIONER FRANKLIN: I think that's an
23 important point. As I look at 13(b), the applicant will
24 always be able to come with a parade of experts and tell us
25 that such housing is not feasible, and they may be right.
26 But they may not be.

1 I would be much more comfortable with having
2 some kind of mechanism there that would allow a third party to
3 give to the Commission some kind of advice. And in the event
4 that that advice is, after a certain period of time, that
5 housing is still not feasible, we ought to then have --
6 although our successors could always change it, but it should
7 have in the order some indication of what is then triggered,
8 what other substitute amenity.

9 If it appears that housing is not financially
10 feasible throughout the whole submarket area, then obviously,
11 this Commission has read the crystal ball wrong or its general
12 program for upgrading this area had not succeeded, and
13 something else has to be done.

14 CHAIRPERSON CLARENS: So let's try to reach
15 resolution here. We want to table the motion, and we want to
16 reopen the record to receive from the applicant further
17 development of the residential concept. How can we -- the
18 whole issue of the amenity package as it concerns the
19 residential development, if we can tighten that somehow, if
20 somehow we can come up with either narrower time frames or
21 more specific means of making this happen or, in the event
22 that it is not feasible, a time frame in which an alternative
23 plan goes into effect.

24 COMMISSIONER FRANKLIN: And the determination
25 of feasibility.

26 CHAIRPERSON CLARENS: And the determination of

1 feasibility by a third party.

2 COMMISSIONER FRANKLIN: Or something.

3 CHAIRPERSON CLARENS: Or something.

4 MS. KRESS: Corporation Counsel.

5 MR. BERGSTEIN: And again, these are just
6 suggestions that the applicant can respond to. But for
7 example, one way of having some certainty to this would be for
8 the applicant to report after the tenth years an annual report
9 as to whether or not it does or does not deem the model to be
10 satisfied at this point--

11 MS. KRESS: It is called for in here right now.

12 MR. BERGSTEIN: It is? All right.

13 MS. KRESS: Starting the eleventh year.

14 MR. BERGSTEIN: Oh, I'm sorry. I didn't see
15 that. Okay. Then what happens after that is what is the
16 response going to be? What is a way of reconciling positions,
17 making something happen?

18 COMMISSIONER FRANKLIN: Mr. Chairman, I am
19 willing to go on record as saying that I believe this is, at
20 least so far as I know at the moment, the only reservation
21 that I have with respect to this project. I think that they
22 have been very forthcoming and responsive on all the other
23 elements that we were concerned about.

24 COMMISSIONER HOOD: I guess my question is
25 should we vote on something, leave it open, or just --

26 CHAIRPERSON CLARENS: No, no. We're tabling

1 it.

2 MS. KRESS: The motion has been tabled?

3 CHAIRPERSON CLARENS: Yes. The motion has been
4 tabled. The motion has been tabled pending receipt from the
5 applicant of additional information, and then the other
6 question is --

7 MS. KRESS: Yes, we reopen the record just for
8 the issue surrounding this discussion.

9 CHAIRPERSON CLARENS: Do we refer the package
10 to the Office of Planning for additional analysis of the
11 substance of the package?

12 MS. KRESS: I believe that's what was discussed
13 and, if that's what the Commission wants, I believe we can
14 also reopen the record to receive the -- to ask the Office of
15 Planning to evaluate the package and submit a report to us.

16 CHAIRPERSON CLARENS: I think that the
17 applicant was present in the room and has the sense of the
18 Commission and the concerns of the Commission, and they can
19 address whichever way they feel they should. Mr. Parsons?

20 COMMISSIONER PARSONS: I'd like to draw your
21 attention to 3(A) and ask the staff of Office of Planning to
22 take a look at this. You there, Mr. Colby? Are you at 3(A)
23 in your book?

24 This is a new plan of the Pavilions in which
25 there's tables up to within eight feet of the seawall, if I
26 scaled it properly. I think anybody who has been to places

1 like Washington harbor or Baltimore probably would agree that
2 eight feet is a little narrow there.

3 In that it's just so specific and it's a second
4 stage PUD, I think we ought to take a look at whether this is
5 a shoreline promenade or something else. Possibly, the intent
6 is to have the promenade go back in front of the detail, which
7 I can understand -- that is, to the rear of the detail of
8 this. But I think they need to make a clear decision as to
9 whether this -- where the promenade is here, as to whether
10 this is a dining area or a shoreline promenade. So I just
11 highlight that for OP's information.

12 It might be more helpful if you looked at Tab
13 5(a), which would show you what I mean by the two different
14 concepts for promenades. 5(a) is a landscape planning plan,
15 but it serves the purpose of showing that people coming off of
16 Potomac Avenue then would come down to the river.

17 If this area was to be more exclusive towards
18 dining, then you would direct them back to going in front of
19 the specialty detail, which may or may not be a good idea. I
20 would just ask the Office of Planning to look at that.

21 CHAIRPERSON CLARENS: Okay. Any other thing?

22 MS. KRESS: I would make -- Corporation Counsel
23 has pointed out that on page 29 -- and there are some
24 conflicts between, but obviously, the order would override.
25 But on page 29 it does leave the market rate development to be
26 economically feasible at such time as the Zoning Commission

1 determines that market rate residential development is
2 economically feasible by applying the model standards. That's
3 29, 4 and 5 deal with that issue.

4 So I just wanted to point that out. That is in
5 -- not necessarily conflict, but it is different than was
6 spoken of in the master materials. So I'm assuming that this
7 overrides, but I just wanted to point that out, because I was
8 incorrect.

9 COMMISSIONER HOOD: Excuse me, Ms. Kress. What
10 page are you on?

11 MS. KRESS: On page 29 of the findings of fact
12 and conclusions of law.

13 MR. BERGSTEIN: It's under Roman Numeral V.
14 Roman Numeral IV says market rate residential development
15 shall be deemed to be economically feasible, but then it
16 doesn't say by who, but then in the very last -- The next
17 sentence has to do with the reports that Ms. Kress was
18 referring to, and then it says that they will be submitted
19 biannually thereafter until such time as either residential
20 development on parcel 3 is commenced or the Zoning Commission
21 determines that the market rate residential development is
22 economically feasible, which means at that point that the
23 development would have to occur. It's just not clear
24 whether or not the Zoning Commission has to -- can do that
25 upon receipt of the first four, but I guess it can. But maybe
26 if that's the intent, it can be clarified that it's the Zoning

1 Commission that would determine after the eleventh anniversary
2 when the model has to be satisfied, and that would trigger the
3 requirement.

4 CHAIRPERSON CLARENS: Anything else that we
5 need from the applicant?

6 MS. KRESS: Not from the applicant, but in
7 leaving the record open I think the other --

8 CHAIRPERSON CLARENS: We are reopening the
9 record. We are not leaving the record open. We are reopening
10 the record.

11 MS. KRESS: Exactly, reopening the record.

12 CHAIRPERSON CLARENS: To get additional
13 information from the applicant, a review from the Office of
14 Planning, and do we need also from Corporation Counsel as to
15 the agreement --

16 MS. KRESS: I think as to the agreements that
17 are included in the covenants, and I don't know that we need
18 that as a part of the motion, but just for clarification,
19 those are the three things that we would like to have done in
20 sufficient time to evaluate at our September meeting.

21 MR. BASTIDA: And the applicant will have to
22 serve these to any parties, and will have to accept the
23 parties -- leave the record also open to accept the parties'
24 responses to them.

25 MS. KRESS: We will work with the applicant.

26 CHAIRPERSON CLARENS: And the time frame -- you

1 will announce a time frame for this submittal?

2 MR. BASTIDA: Yes.

3 CHAIRPERSON CLARENS: You will let the
4 applicant know?

5 MS. KRESS: Yes. We need to check the calendar
6 and work backwards so that there is sufficient time for the
7 response of the other party.

8 CHAIRPERSON CLARENS: Very good. Okay. That
9 concludes then the discussion on Florida Rock.

10 We're going to take a five-minute recess, and
11 we'll reconvene in exactly five minutes.

12 (Whereupon, the foregoing matter went off the
13 record at 3:44 p.m. and went back on the record at 3:58 p.m.)

14 CHAIRPERSON CLARENS: Okay. Members, let's
15 reconvene. The next issue in front of us as proposed action
16 is case 97-7(I), and that is an SP Districts update, and the
17 Office of Planning is prepared, I see, to make a wonderful
18 presentation to help us come to some resolution.

19 **III.C. 97-7(I) (SP DISTRICTS UPDATE)**

20 MR. COCHRAN: Mr. Chairman, the Office will be
21 pleased to give a presentation if you think that it would help
22 make a decision, given the materials that have been presented.
23 I say it only because I understand that you are at some time
24 constraints today.

25 CHAIRPERSON CLARENS: Well, we are, but if you
26 could very quickly guide us through what is in front of us.

1 MR. COCHRAN: Sure. Then I'd like to point out
2 that this six-page, rather drab document is the official
3 record that we submitted after the -- to summarize the last
4 hearing; whereas, this multi-colored, thicker document is only
5 an appendix on that issue raised earlier.

6 So you do have a document signed by the Acting
7 Director and dated July 7 which is the official summary for
8 the rulemaking case. Then I've also handed out this map,
9 which is the recommended -- final recommended zoning by the
10 Office of Planning.

11 You may also want to be aware, in your multi-
12 colored report on page 1, 2, 3, 4, the one that says current
13 zoning, during the last hearing you had asked for a better,
14 more legible map of what the current zoning is. It's
15 contained on page 4 of the multi-colored report -- appendix,
16 rather.

17 Okay. This is what we anticipate will be the
18 final major action on the SP rulemaking cases that started in
19 1997. This area is known as Logan Circle. If I get too far
20 away from the microphone, please --

21 We are looking at an area bounded generally by
22 14th Street, 11th Street, P Street and M Street, N.W. These
23 lines indicate the areas -- the more particular areas that are
24 up for rezoning consideration today.

25 In general, we are looking at N Street as a
26 dividing line between the less intensive zoning to the north

1 and the somewhat more intensive zoning to the south. Whereas,
2 formerly we had suggested -- the Office had suggested that
3 most of this area be rezoned as R-5-B, as of the last hearing
4 report we suggested that in fact it made more sense to
5 distinguish a little bit more the R-5-B zoning closer to the
6 circle in these areas immediately adjacent to the historic
7 district.

8 Something that reflects the market better, R-5-
9 C zoning in this next band, then generally south of N Street
10 R-5-E zoning. We have one or two exceptions to that
11 recommendation for R-5-E. Let's look at the remaining SP-2
12 zoning.

13 This is the lot that's adjacent to the
14 Washington Plaza Hotel. Everyone has understood for several
15 years that this was intended as expansion, and so it's my
16 understanding from before when I got to the office that this
17 is acceptable to the community and to any number of other
18 groups that this remain as SP-2.

19 We're looking at a sliver of R-5-D zoning which
20 is intended to not be the kind of high rise zoning we imagine
21 we might be appropriate here, but sort of a transitional zone
22 between R-5-C and R-5-E.

23 The R-5-D area is the part of Logan Circle
24 where the market isn't quite as hot, where we thought that a
25 3.5 FAR might serve to get the kind of quality development
26 that Logan Circle deserves, but yet would not be the intense

1 R-5-E that is appropriate closer to Massachusetts Avenue,
2 closer to Thomas Circle, and makes somewhat of a transition as
3 you move over towards the Blagdon Alley area.

4 Then there is some C-2-C zoning in through here
5 and some somewhat controversial R-5-E zoning that we're
6 recommending in through here. Let me just highlight the areas
7 of potential controversy. These are the areas where
8 essentially not all parties seem to agree.

9 In Square 280, right in through here, that's
10 the square that has the Iowa. In your map it's -- In this
11 handout it's labeled Roman Numeral III. We've got an
12 alternate proposal that would have this area go to R-5-E with
13 some proposal for covenants along 13th Street and some more
14 typical R-5-E zoning about 110 feet in.

15 We are suggesting instead R-5-C zoning. Now
16 the alternative proposal is based on 13th Street being
17 considered as a special street deserving a special visual,
18 special aesthetic consideration with uniform cornice lines,
19 higher overall heights, etcetera.

20 We go, I mean, precisely in the opposite
21 direction, literally. Whereas, the alternative proposal would
22 have us look north/south at 13th as a special street, we're
23 suggesting that, in fact, N Street is the street that you need
24 to think about as a way of stepping down from the intense uses
25 that are intended along Massachusetts Avenue, the CBD, up to
26 the more R-5-B store preservation oriented uses in the Logan

1 Circle area.

2 So we're suggesting that you make this R-5-C,
3 not R-5-E, as a way of keeping the heights in particular more
4 in conformance with what we see throughout the bulk of that
5 part of the neighborhood, while still allowing adequate
6 density to get the kind of development that we referred to in
7 our last report as the so called ideal development.

8 I don't think that there is much controversy,
9 if any, on the R-5-D. Let's move on to Roman Numeral I, the
10 C-2-C area.

11 CHAIRPERSON CLARENS: The alternative will be
12 to stretch C-2-C all the way to the corner.

13 MR. COCHRAN: The alternative would be to
14 stretch -- Actually, we can't stretch C-2-C all the way to the
15 corner. The alternative would be to stick with the SP-2,
16 because we advertised R-5-B. We can't go as high as
17 advertising -- We didn't advertise C-2-C in any of the
18 iterations on this. So we can't really go to that high a
19 zoning now.

20 We're suggesting the R-5-E as sort of a holding
21 type zoning until we can get back to looking at this specific
22 area in greater detail. R-5-E would keep this in residential
23 use.

24 What we're concerned about is that this lot may
25 be -- these one, two, three, four lots here may be large
26 enough to consolidate and turn into office uses. So we're

1 trying to retain what's there for now with the R-5-E zoning
2 and then look at it again.

3 The C-2-C zoning was specified in the
4 comprehensive plan for these two lots, in particular. We felt
5 that, since there was already C-2-C here, we would, at least
6 for now, be hard pressed to argue that C-2-C was
7 inappropriate.

8 Frankly, there was some back and forth within
9 the neighborhood on what they preferred in the area. That's
10 why we think that we are looking at this as an interim
11 recommendation. Put the R-5-E here now to hold the
12 residential uses on this corner. Go with the C-2-C because
13 that is specified in the comprehensive plan. That is what the
14 neighborhood had formerly wanted for this area in order to
15 make sure that the investments that were put into these
16 properties were not terribly downgraded. We're comfortable
17 with that for now, but we may well be coming back in the
18 future.

19 CHAIRPERSON CLARENS: Now what is wrong with
20 making it SP-2, I mean as long as we have an SP-2?

21 MR. COCHRAN: It would then make the uses
22 nonconforming, and one of the --

23 CHAIRPERSON CLARENS: But we are keeping an SP-
24 2 next to the hotel.

25 MR. COCHRAN: Okay. That gives you an even
26 larger opportunity. If we keep all of this as SP-2, it gives

1 you a fairly large opportunity, since these are not in any
2 historic district right now, to consolidate all of these
3 properties. And if either because the Office of Planning or
4 you don't get back to it, we risk conversion.

5 CHAIRPERSON CLARENS: Well, what is the
6 intention? What is the Office of Planning intention? The C-
7 2-C is there, and that is --

8 MR. COCHRAN: C-2-C is right here.

9 CHAIRPERSON CLARENS: I understand that. And
10 that little parcel, those two lots, are also C-2-C.

11 MR. COCHRAN: These would be recommended for C-
12 2-C.

13 CHAIRPERSON CLARENS: What are they now? They
14 are SP?

15 MR. COCHRAN: SP.

16 COMMISSIONER PARSONS: Keep in mind that all of
17 that R-5-E that's shown on that document is currently SP-2.

18 CHAIRPERSON CLARENS: Yes.

19 COMMISSIONER PARSONS: So the proposal is to
20 re-bound that whole two-block area as R-5-E. If we were to
21 leave an SP-2 remnant over here in the corner as spot zoning,
22 it goes against the whole concept of the planning principle
23 here. I think it ought to be R-5-E, as we advertised.

24 CHAIRPERSON CLARENS: I understand it. I just
25 don't understand -- You say it becomes then R-5-E as a holding
26 pattern.

1 MR. COCHRAN: We're not going to pretend that
2 the comprehensive plan amendments of 1998 and their
3 specification for this area are necessarily the most rational
4 recommendations for this site that we could now imagine, but
5 we have to respect the intentions of the City Council and the
6 ANC for some of this area.

7 We feel that, as currently constituted, the ANC
8 would like to maintain this as residential zoning -- as
9 residential usage, but we also know that, perhaps because of
10 some mixed messages, this was put in as C-2-C.

11 Therefore, in effect, we're taking a Solomon-
12 like approach at splitting the baby or recommending the split
13 of the baby, keeping this as C-2-C where the owner has put in
14 money. It is adjacent to the C-2-C area, but not giving a
15 large enough area to really make it worthwhile to consolidate
16 all of the property and convert it to a highrise structure.

17 We will probably then, we hope, come back to
18 you and suggest another look at this corner, now that the
19 ANC's previous recommendations don't seem to be the same
20 recommendation -- the same as their current recommendation.

21 So that's why we call it a holding pattern. R-
22 5-E, basically --

23 CHAIRPERSON CLARENS: You would not be coming
24 back to us. You will be going back to the Council. You will
25 be going back -- It is the comprehensive plan that --

26 MR. COLBY: Yes. If we came back and restudied

1 it, and I'm not going to -- I don't know what it would be --
2 we probably would also look at 11th Street with the commercial
3 zoning/mixed use zoning along there which includes the HCD
4 residential properties on the corner of C-2-C.

5 MR. COCHRAN: All of this is on C-2-C, even
6 though it's used residentially.

7 CHAIRPERSON CLARENS: I understand about that.
8 Okay. Items 2 and 4?

9 MR. COCHRAN: Okay. Item 2 is the request by
10 the owners of the apartment building here known as the
11 Evergreen to become zoned -- or rather, to remain zoned SP
12 rather than go to R-5-E.

13 You have had a chance to review the record.
14 You understand that they feel that it would be difficult to
15 get financing for conversion to hotel use. We looked at the
16 record, noted that they hadn't -- it didn't seem as though
17 there had been tremendous effort put into getting financing
18 yet, but I can't speak directly for them, only what they
19 testified.

20 We felt that it would set a dangerous precedent
21 to do a spot of SP there and a spot of SP there, and then risk
22 the conversion of the Sutton Tower apartments from residential
23 uses into some other office type use permitted under SP-2.

24 We have to acknowledge that the owners'
25 representative for the Evergreen did state that the Sutton
26 Tower had been recently renovated. Perhaps it would be

1 unlikely that it would be converted to office use after a
2 recent refurbishment as residential.

3 We didn't want to take that risk and continue
4 the SP-2 in a sort of an L-shaped area as a spot -- almost as
5 if spot zoning. So we recommend that all of this become R-5-
6 E.

7 Finally, Area 4: This is the area with the
8 liquor stores and the warehouse that the doctor has testified
9 to in the past are now commercial uses, although in an SP
10 zone.

11 We have not seen statistical evidence that
12 indicates that the property owner couldn't make a go of it
13 with something that would be R-5-E. We recommend that all of
14 this go as R-5-E as part of the residential zone.

15 I can certainly go into more detail rather than
16 give you the overviews on any of these, if you have questions.

17 CHAIRPERSON CLARENS: No, I think that is
18 fairly clear. My only question is, in the case of the
19 apartment building wanting to become a hotel in the R-5-E,
20 what is the cure to that, from a zoning point of view? It
21 would need to get a use variance?

22 MR. COLBY: They've gotten that.

23 CHAIRPERSON CLARENS: They have a use variance.
24 That's right.

25 MR. COLBY: You've done everything that you
26 possibly could to make it possible --

1 CHAIRPERSON CLARENS: They have a special
2 exception.

3 MR. COLBY: Yes, and they would become
4 nonconforming and would then require a use variance to become
5 conforming.

6 CHAIRPERSON CLARENS: So in order to gain
7 financing if the financing institution has a difficulty with
8 the nonconformity of the zoning, in order to cure that they
9 would need to request a variance.

10 MR. COLBY: Once they've lost the SP underlying
11 zoning.

12 CHAIRPERSON CLARENS: Once the SP owner wished
13 the hotel was permitted as a special exception. Okay. So --
14 and there would be a rationale for the granting of a variance,
15 because this is a -- there's a zoning history that supports --
16 Maybe I'm preempting what the BZA would do, but it seems to me
17 that they would -- Okay. And the same thing for the -- What
18 is the name of the apartment building on the other side, the
19 Sutton -- What is it called?

20 MR. COCHRAN: Sutton Towers, which we certainly
21 wouldn't recommend be anything other than R-5-B.

22 CHAIRPERSON CLARENS: Okay. Then the
23 commercial -- those commercial -- little commercial buildings
24 would be nonconforming uses.

25 MR. COLBY: As they currently exist. The new
26 owner could maintain those uses, yes. In fact, they're

1 nonconforming now, because they are retail uses in an SP zone.

2 CHAIRPERSON CLARENS: But once it turns into R-
3 5-E, they would become nonconforming.

4 MR. COLBY: They are nonconforming.

5 MR. COCHRAN: They would remain as they are,
6 nonconforming.

7 MR. COLBY: They are currently nonconforming.

8 CHAIRPERSON CLARENS: Oh, they are currently
9 nonconforming. That's right. So they could continue to
10 operate as nonconforming grandfathered uses, but if they need
11 to change, they would change then to R-5-E.

12 COMMISSIONER PARSONS: Mr. Chairman, I think we
13 should support the Office of Planning and the presentation,
14 not here today but at the hearing -- here today as well, but
15 as contained in the hearing, and I would move we approve the
16 rezoning as presented by the Office of Planning to us here.

17 COMMISSIONER HOOD: I second the motion.

18 CHAIRPERSON CLARENS: Very good. Any further
19 discussion? All in favor, signify by saying Aye. Opposed?
20 The Ayes have it. So ordered.

21 MR. BASTIDA: Mr. Chairman, as the office
22 records the vote: Mr. Parsons moved, Mr. Hood seconded it,
23 and voting three to zero to approve.

24 We have a proxy for Mr. Franklin?

25 MS. KRESS: He would have given it to us. We
26 don't have one.

1 CHAIRPERSON CLARENS: Mr. Franklin? No.

2 MS. KRESS: Unless he gave it to you.

3 CHAIRPERSON CLARENS: No, he did not give me a
4 proxy on this case. He expressed a proxy on another case
5 that's coming.

6 Okay, well, that concludes then, such as it is,
7 the proposed actions, Item III of the agenda, and we move to
8 Item IV, Hearing Action.

9 **IV. HEARING ACTION.**

10 CHAIRPERSON CLARENS: There is none. Is that
11 correct, Mr. Colby? We are now in Item IV, Hearing Action,
12 Office of Planning.

13 MR. COLBY: Yes. There are no hearing actions.

14 **V. REAFFIRMATION OF HEARING ACTION.**

15 CHAIRPERSON CLARENS: Now reaffirmation of
16 hearing action.

17 MS. KRESS: May I introduce that, Mr. Chair?

18 CHAIRPERSON CLARENS: Sure.

19 MS. KRESS: It was a concern, and I definitely
20 want Office of Planning to report, because they have done, I
21 think, a yeoman's job in putting together the history relating
22 to these miscellaneous DD amendments.

23 Just to set the stage, the bench decision that
24 was made has gone ahead or is going ahead and being forwarded
25 to NCPC. Is that correct?

26 MR. BASTIDA: That is correct.

1 MS. KRESS: And the set-down for September 9th
2 that happened June 3rd is getting ready to go to the register
3 and is still planned to be heard on September 9th.

4 MR. BASTIDA: That is correct. We are planning
5 on forwarding to the register sometime this week.

6 MS. KRESS: The issue and what we're talking
7 about in the reaffirmation are all of those other issues, and
8 the reason I requested a second look is because I felt some of
9 these were being done in bits and pieces without a global view
10 of what the concerns were.

11 I understand the need to break out the pieces
12 that belong to the Woodward & Lothrop building and the other -
13 - some of the other pieces that have clearly gone ahead, but
14 I'm concerned about the global view on the remaining issues
15 and whether perhaps it might be appropriate to put on hold
16 those other miscellaneous issues we've already set down -- you
17 have already set down -- until there could be a little more
18 work done on them and a little more global view.

19 I just wanted to say that as background,
20 because this came out of a request that I made when I was
21 still Chairperson, and I just wanted to set the stage prior to
22 the report of Office of Planning.

23 Would you like to -- keeping in mind we're
24 reevaluating it, and I do appreciate your status report.

25 MR. COLBY: Thank you. There are -- Picking up
26 on what Ms. Kress just said, there are two proposals for a --

1 not by the Office of Planning -- that I think are in the
2 category that Ms. Kress referenced.

3 One is on the bottom of page 2, that don't
4 relate to Woodies and that aren't already part of the bench
5 decision. They are the 1301 L Street, residential use of
6 approved PUD office component at the bottom of page 2, and at
7 the bottom of page 3, the DOES site for FAR on-site
8 residential requirement.

9 Those two came to light during the hearing
10 which the Commission held on office use of the Woodward &
11 Lothrop building, and we have commented briefly on both.

12 I would say that -- and I've got a few more
13 comments that aren't in the report from a discussion with GSA
14 on the DOES site. I would say that the essential difference
15 between the two, the 1301 L Street project and the DOES site,
16 is that the 1301 L Street project proposal came from the
17 owner's representative for that property to make more likely a
18 potential hotel use, but nevertheless, that came from the
19 owner.

20 In the case of the DOES site where the District
21 is the owner or has jurisdiction over it, the proposal came
22 from the neighborhood and not from the owner, speaking
23 essentially for the District's property.

24 We have listed some issues which are
25 essentially the issues we raised during the hearing, but we've
26 had further discussion with GSA on that DOES site, and I would

1 only add that they are now looking at -- As our report notes,
2 they are looking at a 100 percent residential possibility and
3 evaluating that, and they are also looking at a hotel, 200
4 unit hotel, or office use where apparently both bring the same
5 return.

6 I would only add that what our report does not
7 say is that replacement of the DOES function, which is
8 critical to the District -- for that to be relocated
9 elsewhere, according to the GSA, cannot be assured with the 4
10 FAR option for residential on the site; and they believe it
11 can be assured with the 2 FAR residential.

12 So that is a significant reason why the Office
13 of Planning would recommend -- if the Commission decides to
14 reevaluate their prior action, that the Office of Planning
15 would recommend that they do so in the case of the DOES site,
16 have less immediate concerns with the 1301 L Street site, but
17 clearly the Commission could put both of those in the same
18 category and request a set-down report from the Office of
19 Planning, basically go back in time, if that's your pleasure
20 to do so.

21 Beyond that, I've jumped around in this report.
22 I'll be happy to answer any questions that you may have. You
23 clearly can look at the Woodward & Lothrop building issues,
24 too, but we -- The two cases that the Commission -- that Ms.
25 Kress referenced are the DOES site and the 1301 L Street site.

26 COMMISSIONER PARSONS: Let's talk about DOES a

1 minute. I'm not sure I understand what you're saying. We're
2 advertised at 2 FAR housing. Is that right?

3 MR. COLBY: It's been -- The Commission bench
4 decided 2 FAR for on-site residential. It's currently --
5 there's a 2 FAR requirement, and the comp plan was changed to
6 say that all that should occur on site. So the 2 FAR
7 requirement is there for residential that will now, according
8 to the Commission's decision in May, have to be all provided
9 on site, and that works.

10 CHAIRPERSON CLARENS: On site?

11 MR. COLBY: On site.

12 CHAIRPERSON CLARENS: But the Commission also
13 voted to increase it to 4 FAR.

14 MR. COLBY: To set it down for a hearing to
15 consider 4 FAR.

16 MS. KRESS: What happened is we had --

17 COMMISSIONER PARSONS: So what is being asked
18 of us today? I don't understand.

19 MS. KRESS: Perhaps I'm doing the asking.
20 What's being asked is, for example, on the historical landmark
21 density restrictions, rather than being written in a general
22 way, it was written specifically for the Woodies project.

23 My concern was that we were dealing with small
24 issues in order to perhaps expedite the Woodies without
25 dealing with the larger issue and the more global issue.

26 The other piece had to do with some -- We had

1 received some major correspondence on the DOES site, and
2 things were changing, and I thought we should have an update
3 before we went ahead and published and set the hearing date.
4 I thought we should have that additional information.

5 COMMISSIONER PARSONS: I have never been so
6 confused in my entire time on this Commission. I just can't
7 believe I'm not getting this.

8 We decided 2 FAR. We've advertised for 4 FAR.
9 You're reporting to us that GSA is considering 100 percent
10 residential, and the District of Columbia is totally opposed
11 to anything more than 2. Is that what you're saying?

12 So you would appear at this hearing on behalf
13 of the Mayor and oppose 4 FAR. Is that correct?

14 MR. COLBY: No. I think that's not right at
15 all. Let me -- First, I thought you were making some other
16 point. No, let me be very clear.

17 GSA, on behalf of the District, is looking at a
18 number of alternatives -- have their economic consultants
19 looking at a -- not a policy decision on the part of GSA.
20 They are putting together an RFP for the District that the
21 District will embrace or not, because it's the District's
22 property, for reuse of that site.

23 One of the alternatives, which is what's
24 required under zoning and now required by the -- further
25 required by this Commission's bench decision, is for two of
26 that six roughly FAR that's possible on the site to be

1 residential. The District -- We have supported that.

2 COMMISSIONER PARSONS: But you also said that
3 you're convinced that that's what it has to be to remain
4 economically viable. That's why I said you come and oppose
5 it.

6 MR. COLBY: Nobody has yet weighed in on the --
7 and GSA is exploring that -- on the possibility of being able
8 to, one, get a developer who is interested in all residential
9 for that site and, two, providing the resources to move to
10 DOES function elsewhere and provide them space somewhere else
11 in the District, both of which have to happen, reuse of the
12 site and relocation of the DOES function.

13 COMMISSIONER PARSONS: I guess I misunderstood
14 you. I thought the District had already made a decision based
15 on some other studies that this had to be no more than 2 or it
16 wouldn't work.

17 MR. COLBY: It did. I mean, GSA is saying, on
18 the basis of the studies that they did, on the basis of the
19 study, to the extent that it is completed, the current study,
20 that that's the case; and it can be no more than 2 FAR
21 residential to be certain that the DOES functions be relocated
22 or leased somewhere else. But in any case -- I mean, I'm not
23 sure.

24 CHAIRPERSON CLARENS: Well, let's backtrack a
25 little bit. Why do we have a reaffirmation of hearing action?

26 MR. COLBY: That's the basic question.

1 MS. KRESS: There were letters and testimony
2 that -- and the Deputy Mayor's letter raised the issues that
3 the Commission proceeded improperly without having received a
4 report from OP, and that the Commission may wish to invite
5 participation from the public on a broader range of issues
6 concerning downtown development.

7 COMMISSIONER PARSONS: Have we seen that
8 letter?

9 MS. KRESS: Yes. That was handed --

10 CHAIRPERSON CLARENS: It is in the package.

11 MS. KRESS: It's in the package, and in
12 addition, reviewing the -- as I mentioned, the amendment to
13 overcome the historic landmark density restrictions has only
14 been done basically for the Woodies building and not for
15 buildings in general.

16 My concern was that it was also being done in
17 bits and pieces. I can be -- I mean, if everyone is fine, I
18 just wanted to bring it up, because I, as Commission Parsons,
19 have never been so confused on so many issues and the way
20 we've been handling them, that I just wanted to bring it up
21 for discussion. If everyone is comfortable, then that's fine.
22 I just wanted to --

23 COMMISSIONER HOOD: I would like to add my name
24 to those who are confused.

25 COMMISSIONER PARSONS: I thought I was -- I
26 missed the May 20th event, and I thought that's why I was

1 confused and was alone in that.

2 COMMISSIONER HOOD: I'm just a little unclear
3 what we are being asked to do, and did make the May meeting.

4 MS. KRESS: I will say that the Office of
5 Planning's report does appropriately designate what
6 transpired. I wasn't even sure what exactly had transpired,
7 to be quite honest, until Office of Planning prepared this
8 report. I am more clear now as to what we did do.

9 COMMISSIONER HOOD: So, apparently, we made a
10 mistake.

11 MS. KRESS: I wouldn't necessarily say it's a
12 mistake. I would just say we were doing small packages, and
13 perhaps -- and we did not have Office of Planning's
14 appropriate input into some of the things we set down.

15 I mean, we had their comment, but I meant they
16 didn't have time to study. Some issues, like I say, have only
17 been done on a small scale for the Woodies -- purpose of the
18 Woodies building, without looking at the global issue such as
19 the historic density issue.

20 My suggestion would be -- and I'd really like
21 to hear from Office of Planning -- is that how do you feel
22 about going back and reevaluating 1301 L? Would there be any
23 benefit? If not, please say it. I think you have
24 done more analysis now on the DOES site, taking a look at the
25 global issue of the amendment -- an amendment to overcome
26 historic landmark density generally instead of just

1 specifically.

2 I'm lost, too. I would really like to hear
3 Office of Planning's proposal. Are you happy with what's set
4 down and the way it is, and should we just stay where we are?

5 MR. COLBY: In a --

6 CHAIRPERSON CLARENS: Mr. Colby, let me
7 interrupt. Let me see if I can summarize what I understand,
8 and then whoever can correct me, and maybe this will help, and
9 it comes from your memo or -- yes, Ms. Aiken's memo which, I
10 assume, is mostly yours.

11 We did make a bench decision. We voted to make
12 residential use a possible use in the Woodies building, and
13 that we voted on.

14 MR. COLBY: Right.

15 CHAIRPERSON CLARENS: We also voted on the TDR
16 issue applicable throughout the DB and C4 areas.

17 MR. COLBY: We then, from the Office of
18 Planning as well as from Wilkes, Artis coming from two
19 different places, that amendment was adopted by the
20 Commission.

21 MS. KRESS: Can I ask a question. Do you
22 support that? Does Office of Planning support this TDR
23 amendment?

24 MR. COLBY: Yes.

25 MS. KRESS: Okay, thank you.

26 CHAIRPERSON CLARENS: Well, and we voted on it.

1 MS. KRESS: No, but Office of Planning -- Some
2 of this was added by Wilkes, Artis. I wasn't sure Office of
3 Planning supported it.

4 CHAIRPERSON CLARENS: Okay. Then we also voted
5 to make the 2 FAR, which is the standard FAR residential use,
6 not transferable in the case of the DOES building.

7 MR. COLBY: For a C-4 property, standard for a
8 C-4 property indeed, which is what's the case here. Yes, you
9 did.

10 CHAIRPERSON CLARENS: Yes, that's right. It
11 was the case there. That's right. Okay. So those were voted
12 on and decided, and we also then had a special meeting after
13 that hearing in which we decided on having a hearing on the
14 issue of the relationship between residential, office and
15 retail use of the Woodies building.

16 MR. COLBY: You voted to set that down.

17 CHAIRPERSON CLARENS: To set that down for a
18 hearing on September 9th.

19 MS. KRESS: No, we don't do that until the June
20 3rd meeting. Excuse me.

21 MR. BASTIDA: That is --

22 MS. KRESS: This was going to be set down
23 additionally at late -- At this point, it's going to be set
24 down, in fact, middle-late fall.

25 MR. BASTIDA: This is on what you sent down at
26 the meeting following that hearing. Then you did these other

1 --

2 CHAIRPERSON CLARENS: I understand that, all
3 the way to here.

4 MR. BASTIDA: And then you did this on June
5 3rd.

6 CHAIRPERSON CLARENS: Okay. So now I'm a
7 little bit clearer. So now what is it that you are asking
8 about, whether we want to -- Well, originally we are going to
9 go back on the decision that we made on the first --

10 MS. KRESS: No. I never suggested that.

11 CHAIRPERSON CLARENS: Okay. So then the
12 question becomes have we set down hearings for the Woodies
13 building, the L Street residential use, and the DOES site.

14 MS. KRESS: And I was not even proposing the
15 Woodies building, because we heard that, and we have made a
16 commitment and a set-down for September 9th, and I would not
17 suggest that we redo the Woodies building.

18 CHAIRPERSON CLARENS: Okay. So you are pulling
19 that out, and then so we are talking really about the L Street
20 residential use.

21 MR. COLBY: And the DOES.

22 MS. KRESS: And a more global view, unless
23 again you disagree with me, Mr. Colby, regarding the amendment
24 to overcome historic landmark density restrictions. Right now
25 it's only written for Woodies. Am I not correct? And it
26 would need to be redone to be written for other historic

1 landmark properties?

2 MR. COLBY: I can't answer that. The bench
3 decided residential use was written for Grid 346, and I don't
4 think anybody suggested that that should be written or, you
5 know -- for other department stores. It was really aimed at
6 Woodies, but sites for 346.

7 I think the hearing could explore that issue.

8 CHAIRPERSON CLARENS: Yes. What is the concern
9 with setting then the 1301 L Street residential use and the
10 DOES building for a hearing?

11 MS. KRESS: Well, I'm feeling much better. I
12 now am understanding. Like I say, until I received this, I
13 wasn't even quite sure what we had passed -- my notes weren't
14 clear -- and what we had not passed.

15 CHAIRPERSON CLARENS: Okay. So we have already
16 set Woodies, and we're going to deal with Woodies on September
17 9th. So we can then reaffirm that we would like to set down
18 for a hearing the other issues that are in front of us, which
19 is this residential use, the L Street residential use and the
20 DOES building.

21 COMMISSIONER HOOD: Second the motion.

22 COMMISSIONER PARSONS: DOES at the 4 FAR?

23 CHAIRPERSON CLARENS: Well, all I'm saying is
24 that we agreed that we were going to hear the case. We
25 haven't agreed that we're going to approve it, that we're
26 going to change the text, but that we were going to hear the

1 case.

2 Now you're questioning that petition? Is that
3 what you're doing?

4 COMMISSIONER PARSONS: I don't know what the
5 decision is.

6 CHAIRPERSON CLARENS: Well, the decision is to
7 hear that.

8 COMMISSIONER PARSONS: Have a hearing November,
9 January or some other time or add this to September 9th?

10 CHAIRPERSON CLARENS: No, no. We not going to
11 add anything to September 9th.

12 COMMISSIONER PARSONS: Why not?

13 CHAIRPERSON CLARENS: September 9th is Woodies,
14 because that's already going to be enough of an issue. We're
15 going to hear Woodies on September 9th.

16 COMMISSIONER PARSONS: Why is it that we
17 decided not to take Mr. Docter's advice on the DOES site, and
18 when did we do that?

19 CHAIRPERSON CLARENS: We haven't decide whether
20 to take it or not to take it. What we've decided is to hear
21 it.

22 COMMISSIONER PARSONS: But wasn't that proposal
23 before us on a previous date? We haven't discussed 4 FAR
24 DOES.

25 MR. COLBY: No, you have not.

26 CHAIRPERSON CLARENS: To my knowledge.

1 MS. KRESS: It has not been discussed.

2 COMMISSIONER HOOD: We set it down for a
3 hearing, and I believe that's where we're going, if I'm
4 correct. We had set --

5 COMMISSIONER PARSONS: I understood we voted in
6 May for a 2 FAR nontransferable.

7 MS. KRESS: True.

8 COMMISSIONER PARSONS: This is the first time
9 we've discussed 4 FAR?

10 MS. KRESS: On the May 20th meeting after the
11 bench decision, the 4 FAR was --

12 CHAIRPERSON CLARENS: The 2 FAR is not an
13 issue. The nontransferable 2 FAR was what we voted on.

14 COMMISSIONER HOOD: And we set the 4 FAR--

15 CHAIRPERSON CLARENS: And then there is a
16 request which the Office of Planning is characterizing as an
17 unsolicited request for an increase of the 2 FAR to a 4 FAR in
18 the DOES site.

19 COMMISSIONER PARSONS: And we are agreeing this
20 afternoon to set that down for a hearing sometime in --

21 CHAIRPERSON CLARENS: And it was agreed -- It
22 was agreed, and what I guess the Office of Planning is
23 requesting is that we reaffirm that decision.

24 MS. KRESS: Well, are you requesting that, Mr.
25 Colby?

26 MR. COLBY: Being a bad loser, which was where

1 we were after you set it down, because we recommended against
2 setting it down at 4 FAR -- Being a bad loser, given an
3 opportunity to come back and say don't do that, that's where
4 we are. We think that's a mistake to even consider 4 FAR for
5 that -- as a requirement for that site.

6 It may work, but not as a requirement. So it's
7 up to the Commission, clearly, whether they want to take the
8 action they've already taken and follow through with it or to
9 backtrack and ask for a set-down report and a more thorough
10 analysis before you take that action.

11 COMMISSIONER HOOD: I think we need to stick
12 with what we said. If Office of Planning at the hearing wants
13 to bring some evidence more, then I think that's in order.

14 CHAIRPERSON CLARENS: And I feel at this point
15 exactly the same way. I feel that I don't know that I
16 understood the wisdom nor the planning principles involved in
17 increasing it to a 4.0 FAR, but it also seems to me that we
18 discussed it --

19 COMMISSIONER PARSONS: That's what the hearing
20 was for.

21 CHAIRPERSON CLARENS: We discussed it -- No, we
22 discussed it at the meeting that we had, and we set it down.
23 So we saw enough merit to set it down, and then we should
24 proceed with that and hear the case, and if we find that, if
25 the 4.0 doesn't make any sense, we won't approve it. That's
26 all.

1 COMMISSIONER PARSONS: My confusion is I
2 thought we had added it to the Woodies case of September 9th.

3 CHAIRPERSON CLARENS: No.

4 COMMISSIONER PARSONS: We have not done that?

5 CHAIRPERSON CLARENS: We have not done that,
6 and we have not done either the L Street residential use. So
7 what I guess we are reaffirming, if I can get the votes, is
8 that we will at some point, to be established by the staff
9 and then we need to be informed, to hear both of these issues
10 and for the Office of Planning to prepare accordingly.

11 COMMISSIONER HOOD: So move, Mr. Chairman.

12 COMMISSIONER PARSONS: Second.

13 CHAIRPERSON CLARENS: All in favor, signify by
14 saying Aye. All right.

15 MS. KRESS: Let me point out that at this
16 point, while our regular meeting in September is absolutely
17 crammed, we really right now only have the one hearing on
18 September 9th's schedule. So we could take this also up in
19 September, at one of the dates in September, because we have
20 the summer and the 40 days to get out the information.

21 So these could follow each other, so that the
22 information gleaned from the various hearings could perhaps be
23 used and kept together, since they are all kind of related
24 issues.

25 CHAIRPERSON CLARENS: Yes, and that's what is
26 troubling me about this whole thing, is that it is really

1 very, very much fragmented and piecemeal and spot zoning-like.
2 I don't like it. I don't see overall principles at work, you
3 know, great philosophical ideas implemented. I see we're
4 dealing and we're tinkering with the plan.

5 I think that, unfortunately, that comes a
6 little bit from the comp plan in the way that it's handled
7 certain sites. But it seems to me that you are absolutely
8 right and, if we can deal with it in September, not at the
9 same time but in conjunction with at least in terms of the
10 overall sense of what's happening with the DD area and the
11 housing in downtown, I think that that will be great.

12 MS. KRESS: I think it would also be
13 appropriate to ask Office of Planning if they want to take a
14 little more of a global view and, if they see anything else
15 that --

16 MR. COLBY: For the follow-on meeting?

17 MS. KRESS: Yes -- that relates to --

18 CHAIRPERSON CLARENS: -- those linkages and
19 makes it more comprehensive.

20 MR. COLBY: We started implementing the
21 comprehensive plan, and we've gone beyond that. So I suppose
22 we could look at any other areas.

23 I would only say that we -- I strongly hesitate
24 to get back into DD very far, because we'll never get out of
25 it without some substantial evaluation.

26 CHAIRPERSON CLARENS: No, but I guess what I'm

1 looking for is -- In the presentation of Mr. Cochran, one of
2 the things that I appreciated was the clarity of the planning
3 concepts which were being implemented, the N Street as a
4 division.

5 I know we cannot reach that kind of clarity all
6 the time, but there were underlying principles at work which
7 then kind of help us justify a specific decision. I think
8 that, if we can look at these issues more globally than just
9 simply the one-one-one or the one-one of Woodies, but Woodies
10 in a larger context, I think that will be very helpful.

11 MR. COLBY: We can do that. I'm not sure that
12 it will bring any additional amendments. I'm not sure how we
13 would get at them, but we can certainly put what's before you
14 now into a context where you have a better framework for
15 deciding.

16 CHAIRPERSON CLARENS: That's right. From that
17 discussion, from those principles, then we can establish that
18 there are further actions that this Commission can take that
19 we can direct -- that we can take on our own initiative. Very
20 good.

21 Where are we?

22 MS. KRESS: I believe we're now moving to the
23 final action on the Regulatory Reform Control Board issues.

24 **VI. FINAL ACTION.**

25 MR. BASTIDA: And based on our previous
26 discussion, we would request that you reschedule this for the

1 September meeting.

2 CHAIRPERSON CLARENS: That is correct, and that
3 will be pending some action by both -- some review by both
4 staff and Corporation Counsel on those issues.

5 MR. BASTIDA: That is correct, Mr. Chairman.

6 MS. KRESS: To meet the issues of sufficiency.

7 CHAIRPERSON CLARENS: Yes. So final action on
8 the Regulatory Reform Control Board issues is postponed until
9 September.

10 **VII. CONSENT CALENDAR.**

11 CHAIRPERSON CLARENS: Consent calendar is none.

12 **VIII. STATUS REPORT.**

13 CHAIRPERSON CLARENS: Status report of the
14 Office of Planning.

15 MR. COLBY: I think it, once again, speaks for
16 itself. We have almost no changes at this time except -- It's
17 essentially the same as before mentioned, adding Woodies to
18 the cases that are in there, and it's before you and you can
19 read it. It's just the Italics that you would be interested
20 in as a change from the previous month, and very little is
21 changed.

22 CHAIRPERSON CLARENS: Okay. Any question on
23 that issue from the Commission to the Office of Planning?

24 **IX. LEGISLATIVE REPORT.**

25 CHAIRPERSON CLARENS: Legislative report, Mr.
26 Bastida, is none.

1 **X. LITIGATION.**

2 CHAIRPERSON CLARENS: Litigation is none.

3 **XI. REPORT OF THE SECRETARY.**

4 CHAIRPERSON CLARENS: And you don't have any
5 report to us.

6 MR. BASTIDA: Of the Director?

7 **XII. REPORT OF THE DIRECTOR.**

8 CHAIRPERSON CLARENS: Then report of the
9 Director. Well, first of all, I think that we should as a
10 Commission welcome the Director in her new capacity as
11 Director of the Office of Zoning and wish her the best of luck
12 in performing her duties.

13 COMMISSIONER HOOD: Mr. Chair, if I could just
14 add to that. I'm looking forward to a good working
15 relationship with Ms. Kress. She has a wealth of knowledge,
16 and she's up to the task, and I will be supporting her as
17 Director 100 percent and working with her.

18 CHAIRPERSON CLARENS: Very good.

19 MS. KRESS: Thank you.

20 CHAIRPERSON CLARENS: You had something to say
21 to us about caps on Commission and Board members?

22 MS. KRESS: Basically -- and I don't know if
23 Dan is back, but Niombi, who is our computer specialist, has
24 come on board. Today is his first day, and he will be
25 instrumental in getting us computerized and working with the
26 Hansen system and heading toward our goal of being able to put

1 all of our work, scan it, scan all of our files onto the
2 computer, and be able to both intra, inside, be able to have
3 all the history and information filed by property, lot square,
4 case number, as well as an exchange of information with both
5 DCRA and Public Works, so that we will be able to gather all
6 of that information easily for use in-house as well as out of
7 house.

8 People will be able to access that, both from
9 DCRA, Public Works, and probably also through the Web to gain
10 that information. He is a very -- going to play a very, very
11 key role for us, and I'm very pleased and excited that he's on
12 board as of today.

13 The other issue, and I've spoken briefly to
14 Alan Bergstein regarding this, is there are caps right now on
15 how much the Commission makes, the Mayor's members of the
16 Commission, \$3,000, I believe, per individual and \$3500 for
17 the Chairperson of the Board and of the Zoning Commission.

18 Unfortunately -- Fortunately, the Control Board
19 did give us some additional money. We are having some money
20 problems in our base budget because, unfortunately, the Zoning
21 Commission members and the BZA members of the Mayor got
22 changed from being in the personnel to the non-personnel
23 category and basically being a vendor, and happen to be in the
24 same category as the transcribing, which has cost us quite a
25 bit this year because of the lack of --

26 CHAIRPERSON CLARENS: And we walk out and let

1 them see how they conduct business.

2 MS. KRESS: We don't have our mike system and
3 our sound system, and so unfortunately, we haven't had the
4 money, and I'm working on that right now, to pay appropriately
5 Board and Zoning Commission members. But in addition, we do
6 need -- We have the problem, even if we have the money and I'm
7 working on that with -- Right now there are caps in place, and
8 we need to go to the City Council to have those caps removed.

9 I've mentioned that to Alan Bergstein, that we
10 need to address some legislation for City Council to remove
11 from us the \$3,000 and \$3500 cap so that the members can get
12 paid what is actually due them. So we'll be working on that
13 for this fall.

14 CHAIRPERSON CLARENS: Maybe after today Ms.
15 Ambrose would be willing to present that legislation.

16 MS. KRESS: But we are working on making
17 changes, and we hope to have a lot to show you in September.
18 September 13th, we hope to have some major things to show you
19 on what we're going to be doing this summer to help reorganize
20 and make us more efficient.

21 CHAIRPERSON CLARENS: Very well.

22 **XII. OTHER BUSINESS**

23 CHAIRPERSON CLARENS: Other business, Mr.
24 Bastida?

25 MR. BASTIDA: Mr. Chairman, you -- In your
26 package was included a reminder schedule, the updated list on

1 the zoning district in the District of Columbia that you
2 requested from the Office of Planning.

3 MS. KRESS: Can I thank Office of Planning for
4 that. We did request that, and I think this is going to be --
5 I certainly could have used this some years ago as my cheat
6 sheet as a Zoning Commission member. I think this is going to
7 be very helpful, and I want to thank the Office of Planning
8 for doing this.

9 MR. BASTIDA: A letter of Ms. Ambrose
10 requesting -- recommending somebody for my position, and a
11 real estate report from the real estate.

12 CHAIRPERSON CLARENS: On the issue of the
13 letter of Ms. Ambrose, I've asked the Director to write Ms.
14 Ambrose a response on behalf of the Commission informing her
15 that it is the Commission's responsibility to employ a
16 director of the Office of Zoning, and it is the Director of
17 the Office of Zoning responsibility to hire the rest of the
18 staff of the Office of Zoning.

19 So it is not the Commission's responsibility
20 nor authority to hire individual members of the staff.

21 MS. KRESS: And I've written that down. I'll
22 take care of that.

23 CHAIRPERSON CLARENS: Okay. If I don't hear
24 any other business, I am ready to adjourn. Hearing none, this
25 meeting is adjourned.

26 (Whereupon, the foregoing matter went off the

1 record at 4 :55 p.m.)